

No. 85-1581

FILED

JUL 24 1985

JOSEPH F. SPANIOLO, JR.

CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

RICHARD SOLORIO, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT.

ON A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF MILITARY APPEALS

JOINT APPENDIX

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Petition for Certiorari Filed March 26, 1986
Certiorari Granted June 16, 1986

20428

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In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1581

RICHARD SOLORIO, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT.

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF MILITARY APPEALS**

**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

May 21, 1985—Charges and specifications against petitioner referred to trial by general court-martial.

May 28, 1985—Petitioner's motion to dismiss Alaska charges and specifications because of a lack of court-martial subject-matter jurisdiction filed.

June 3, 1985—General court-martial commenced.

June 4, 1985—Trial judge granted petitioner's motion to dismiss the Alaska charges and specifications.

June 5, 1985—Government filed its notice of appeal.

July 5, 1985—Government filed its brief in support of its appeal from the trial judge's ruling at the Coast Guard Court of Military Review.

July 25, 1985—Petitioner filed his answering brief.

August 7, 1985—Hearing by the Coast Guard Court of Military Review on the Government's appeal.

September 24, 1985—Opinion and judgement of the Coast Guard Court of Military Review granted the Government's appeal and reversed the decision of the trial judge.

October 10, 1985 - Petitioner filed petition for grant of review at the Court of Military Appeals.

October 25, 1985 - Petitioner filed brief in support of his petition for grant of review.

November 15, 1985 - Government filed its answer in opposition.

November 19, 1985 - Hearing by Court of Military Appeals on petition for grant of review.

January 27, 1986 - Order granting the petition for grant of review, and opinion and judgment of the Court of Military Appeals affirming the decision of the Coast Guard Court of Military Review.

February 7, 1986 - Mandate issued.

IN THE
UNITED STATES COURT OF MILITARY APPEALS

USCMA Dkt. No. 53603/CG

CMR Misc. Dkt. No. 004-85

UNITED STATES, APPELLEE

v.

RICHARD SOLORIO (549-04-2211), APPELLANT

Notice is hereby given that a petition for grant of review was filed under Rule 20 on this 10th day of October, 1985.

Appellant will file a supplement to the petition in accordance with Rule 21 on or before the 12th day of November, 1985.

For the Court,

/s/ JOHN A. CUTTS, III

Deputy Clerk of the Court

cc: The General Counsel, Department of Transportation
Appellate Defense Counsel
Appellate Government Counsel

IN THE
UNITED STATES COURT OF MILITARY APPEALS

CGCMR Misc. Dkt. No. 004-85
USCMA Docket No. 53603 [For Court use only]

UNITED STATES, APPELLEE

v.

RICHARD SOLORIO (549-04-2211), Yeoman First Class (E-6),
U.S. Coast Guard, USCG Group, New York, N.Y.
APPELLANT

ARTICLE 62 PETITION FOR GRANT OF REVIEW

TO THE JUDGES OF THE UNITED STATES COURT
OF MILITARY APPEALS:

1. I hereby petition the Court for review, pursuant to RCM 908, of the decision of the Coast Guard Court of Military Review on the Government's appeal from dismissal of charges and specifications in the captioned case.

2. I understand that, unless I specifically request the contrary, a military lawyer will be designated by the General Counsel, Department of Transportation, to represent me free of charge before the U.S. Court of Military Appeals.

SIGNED: /s/ RICHARD SOLORIO

DATED: 8 October 1985

MAIL TO: U.S. Court of Military Appeals
450 E. Street, N.W.
Washington, D.C. 20442

IN THE
UNITED STATES COURT OF MILITARY APPEALS

USCMA Dkt. No. 53603/CG
CMR Misc. Dkt. No. 004-85

UNITED STATES, APPELLEE

v.

RICHARD SOLORIO (549-04-2211), APPELLANT

ORDER

Because no petition for reconsideration has been filed within the period prescribed by Rule 31(a) of the Rules of Practice and Procedure, United States Court of Military Appeals, it is by the Court this 7th day of February 1986,

ORDERED:

That this Court's opinion in the above-entitled case (21 M.J. 251) is now final.

For the Court,

/s/ JOHN A. CUTTS, III
Deputy Clerk of the Court

cc: The General Counsel, Department of Transportation
Appellate Defense Counsel (BRUCE)
Appellate Government Counsel (DONLON)

BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER THIRD COAST GUARD DISTRICT,
GOVERNORS ISLAND, NEW YORK

Charges, Specifications and Jurisdictional Statements
Referred to Trial, May 21, 1986

CHARGE I, VIOLATION OF THE UCMJ, ARTICLE 134

Specification 1: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, at U.S. Coast Guard Support Center, Governors Island, New York, New York, at or near Building 866, Apartment 4-B, during the period 4-5 January 1985 take indecent liberties with Melissa Carney, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Quartermaster Second Class Steven Carney, USCG, by exposing his genitals to her, with intent to gratify the lust and sexual desires of the said Solorio.

Specification 2: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, at U.S. Coast Guard Support Center, Governors Island, New York, New York, at or near Building 866, Apartment 4-B, at diverse times during the period from about 20 November to about 31 December 1984 take indecent liberties with Melissa Carney, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Quartermaster Second Class Steven Carney, USCG, by exposing his genitals to her, with intent to gratify the lust and sexual desires of the said Solorio.

Specification 3: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, at U.S. Coast Guard Support Center, Governors Island, New York, New York, at or near Building 866, Apartment 4-B, during the period from about 20 November 1984 to about 5 January 1985 take indecent liberties with Melissa Carney, a female under the age of 16 years not the wife of the said Solorio and

dependent daughter of Quartermaster Second Class Steven Carney, USCG, by pulling his underwear partially down to his abdomen to show her his operative scar, with intent to gratify the lust and sexual desires of the said Solorio.

Specification 4: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, at U.S. Coast Guard Support Center, Governors Island, New York, New York, at or near Building 866, Apartment 4-B, during the period from about 20 November to about 31 December 1984 commit lascivious acts upon the body of Melissa Carney, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Quartermaster Second Class Steven Carney, USCG, by laying on top of her and licking her on the neck, with intent to gratify the lust and sexual desires of the said Solorio.

Specification 5: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, at U.S. Coast Guard Support Center, Governors Island, New York, New York, at or near Building 866, Apartment 4-B, during the period from about 20 November 1984 to about 5 January 1985 commit indecent acts upon the body of Melissa Carney, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Quartermaster Second Class Steven Carney, USCG, by holding her with his hand on her genital area when throwing her on a bed with intent to gratify the lust and sexual desires of the said Solorio.

Specification 6: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, at U.S. Coast Guard Support Center, Governors Island, New York, New York, at or near Building 866, Apartment 4-B, during the period from about 26 November 1984 to about 4 January 1985 take indecent liberties with Melissa Carney, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Quartermaster Second Class Steven Carney, USCG, by showing a video-taped movie which included male and female frontal nudity and sexual intercourse

with the intent to gratify the lust and sexual desires of the said Solorio.

Specification 7: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, at U.S. Coast Guard Support Center, Governors Island, New York, New York, at or near Building 866, Apartment 4-B, during the period 4-5 January 1985 take indecent liberties with Jennifer Scott, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Electricians Mate First Class Thomas Scott, USCG, by exposing his genitals to her, with intent to gratify the lust and sexual desires of the said Solorio.

Specification 8: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 26 March 1983 to about 30 June 1983 commit lascivious acts upon the body of Amber L. Johnson, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Chief Warrant Officer (W-2) Larry V. Johnson, USCG, by touching her in her genital area with his genital area while the said Solorio and Amber L. Johnson were fully clothed, with intent to gratify the lust and sexual desires of the said Solorio.

Specification 9: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 26 March 1983 to about 30 June 1983 commit lascivious acts upon the body of Amber L. Johnson, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Chief Warrant Officer (W-2) Larry V. Johnson, USCG, by taking her hand and placing it on his genital area, with intent to gratify the lust and sexual desires of the said Solorio.

Specification 10: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New

York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 26 March 1983 to about 30 June 1983 commit lascivious acts upon the body of Amber L. Johnson, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Chief Warrant Officer (W-2) Larry V. Johnson, USCG, by taking her hand with his hand and placing her hand upon her genital area, with intent to gratify the lust and sexual desires of the said Solorio.

Specification 11: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 26 March 1983 to about 30 June 1983 commit lascivious acts upon the body of Amber L. Johnson, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Chief Warrant Officer (W-2) Larry V. Johnson, USCG, by showing her adult magazines depicting frontal nudity and explicit sexual activity, with intent to gratify the lust and sexual desires of the said Solorio.

Specification 12: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 26 March 1983 to about 5 June 1983 commit lascivious acts upon the body of Jennifer L. Grantz, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Yeoman Second Class Frank Grantz, USCG, by placing his hand underneath her slacks and fondling her buttocks and genital area, with intent to gratify the lust and sexual desires of the said Solorio.

CHARGE II, VIOLATION OF ARTICLE 128, UCMJ

Specification 1: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 26 March 1982 to about 25 March 1983 unlawfully touch and fondle Amber L. Johnson, a female under the age of 16 not the wife of the said Solorio and dependent daughter of Chief Warrant Officer (W-2) Larry V. Johnson, USCG, by placing his hand on her genital area.

Specification 2: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 26 March 1982 to about 25 March 1983 unlawfully touch and fondle Amber L. Johnson, a female under the age of 16 not the wife of the said Solorio and dependent daughter of Chief Warrant Officer (W-2) Larry V. Johnson, USCG, by rubbing his genital area against her genital area while both parties were clothed.

Specification 3: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 26 March 1982 to about 25 March 1983 unlawfully touch and fondle Amber L. Johnson, a female under the age of 16 not the wife of the said Solorio and dependent daughter of Chief Warrant Officer (W-2) Larry V. Johnson, USCG, by taking her hand and placing it on his genital area.

Specification 4: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska at 8916 Birch Lane, Juneau, Alaska,

at divers times during the period from about 26 March 1982 to about 25 March 1983 unlawfully touch and fondle Amber L. Johnson, a female under the age of 16 years not the wife of the said Solorio and dependent daughter of Chief Warrant Officer (W-2) Larry V. Johnson, USCG, by taking her hand and placing it on her genital area.

Specification 5: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 26 March 1982 to about 25 March 1983 unlawfully touch and fondle Jennifer L. Grantz, a female under the age of 16 not the wife of the said Solorio and dependent daughter of Yeoman Second Class Frank Grantz, USCG, by placing his hand in her slacks and fondling her buttocks and genital area.

ADDITIONAL CHARGE: I, VIOLATION OF THE UCMJ, ARTICLE 80

Specification: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 1 August 1983 to about 30 June 1984, attempt to rape Jennifer L. Grantz, a female under the age of 16 not the wife of the said Solorio and dependent daughter of Yeoman Second Class Frank Grantz, USCG.

ADDITIONAL CHARGE: II, VIOLATION OF THE UCMJ, ARTICLE 134

Specification 1: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau Alaska at 8916 Birch Lane, Juneau, Alaska,

at divers times during the period from about 3 April 1983 to about 30 June 1984, take indecent liberties with Jennifer Grantz, a female under the age of 16 not the wife of the said Solorio and dependent daughter of Yeoman Second Class Frank Grantz, USCG, by showing her and allowing her to look at adult magazines depicting frontal nudity and explicit sexual activity and reading sexually oriented jokes and stories to her, with intent to gratify the lust and sexual desires of the said Solorio.

Specification 2: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 1 August 1983 to about 30 June 1984, commit an indecent assault upon Jennifer Grantz, a female under the age of 16 not the wife of the said Solorio and dependent daughter of Yeoman Second Class Frank Grantz, USCG, by removing her shorts and panties with the intent to gratify the lust and sexual desires of the said Solorio.

JURISDICTIONAL STATEMENT FOR CHARGE I SPECIFICATION 10-15 AND CHARGE II

The accused is an active duty member of the Coast Guard. The victims are dependents of active duty members of the Coast Guard. The specifications describe indecent liberties and lascivious acts with the dependent daughters of Coast Guard members that were fostered by the trust and friendship that is engendered and encouraged among Coast Guard families living in off-base locations in Juneau, Alaska. The housing area near accused's housing at Birch Lane, Juneau, Alaska is a popular housing area for Coast Guard personnel with over 12 Coast Guard families in the immediate vicinity. Such indecent liberties and lascivious acts destroy this trust and friendship between the accused and the victim's families who are unsure of whom to trust their dependent daughters with. The taking of indecent liberties and lascivious acts by the accused has a direct adverse impact on military discipline

and effectiveness of the victim's family, and has diverted scarce resources of Coast Guard social workers and medical personnel in treating the victims. As such, these off-base offenses of the accused constitute a threat to the effective performance of duty [of] the military members affected and of the commands affected by the charged offense. The charged offenses have a detrimental effect on the reputation and morale of personnel of Coast Guard Support Center New York and Coast Guard commands in Juneau, Alaska. Because of the high mobility of Coast Guard personnel, such charged offenses have a similar effect on personnel at other Coast Guard commands who are aware of the threat to their families posed by child abuse. All of the witnesses presently are assigned within 300 miles of New York City. Because the accused and all victims have been transferred from Juneau, Alaskan authorities are unlikely to prosecute these offenses in civilian courts.

JURISDICTIONAL STATEMENT FOR ADDITIONAL CHARGES I AND II

The accused is an active duty member of the Coast Guard. The victim is a dependent of an active duty member of the Coast Guard. The Charges and Specifications describe acts of attempted rape, indecent assault, and indecent liberties with dependent daughter of Yeoman Second Class Frank Grantz, Jennifer Grantz. These acts were fostered by the trust and friendship that is engendered and encouraged among Coast Guard families living in off-base housing in Juneau, Alaska. The housing area near accused's housing in Juneau, Alaska is a popular housing area for Coast Guard personnel with over 12 Coast Guard families in the immediate vicinity. Such indecent acts with female dependent children of Coast Guard members destroy this trust and friendship between the accused and the victims's families who are unsure of whom to trust their dependent daughters with. These acts by the accused have a direct adverse impact on military discipline and effectiveness of the military member of the victim's family, and has diverted scarce resources of Coast Guard Social workers and medical personnel in treating the victims. As

such, these off-base offenses constitute a threat to the effective performance of the military members affected by these acts of violence toward members of the Coast Guard family. The charged offenses have a detrimental effect on the reputation of the Coast Guard and the morale of Coast Guard personnel of the U.S. Coast Guard Support Center New York, U.S. Coast Guard Group New York, and Coast Guard Commands in Juneau, Alaska. Because of the high mobility of Coast Guard personnel, such charged offenses have a similar effect on other Coast Guard commands who are aware of the threat to Coast Guard families posed by child abuse. All of the witnesses are assigned within 300 miles of New York. Because the accused and the victim's family has been transferred from Juneau, Alaska, Alaskan Authorities are unlikely to prosecute these offenses in civilian courts.

ADDITIONAL CHARGE: III, VIOLATION OF THE UCMJ, ARTICLE 128

Specification: In that Yeoman First Class Richard Solorio, U.S. Coast Guard, U.S. Coast Guard Group New York, Governors Island, New York, New York did, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska at 8916 Birch Lane, Juneau, Alaska, at divers times during the period from about 1 October 1982 to about 2 April 1983, unlawfully touch Jennifer A. Grantz, a female under the age of sixteen years not the wife of the said Solorio, and dependent daughter of Yeoman Second Class Frank Grantz, USCG, by removing her shorts and panties, laying on top of her, and making back and forth movements with his body.

JURISDICTIONAL STATEMENT FOR ADDITIONAL CHARGES I, II, AND III

The accused is an active duty member of the Coast Guard. The victim is a dependent of an active duty member of the Coast Guard. The Charges and Specifications describe acts of attempted rape, indecent assault, and indecent liberties with [the] dependent daughter of Yeoman Second Class Frank

Grantz, Jennifer Grantz. These acts were fostered by the trust and friendship that is engendered and encouraged among Coast Guard families living in off-base housing in Juneau, Alaska. The housing area near accused's housing in Juneau, Alaska is a popular housing area for Coast Guard personnel with over 12 Coast Guard families in the immediate vicinity. Such indecent acts with female dependent children of Coast Guard members destroy this trust and friendship between the accused and the victims's families who are unsure of whom to trust their dependent daughters with. These acts by the accused have a direct adverse impact on military discipline and effectiveness of the military member of the victim's family, and has diverted scarce resources of Coast Guard Social workers and medical personnel in treating the victims. As such, these off-base offenses constitute a threat to the effective performance of the military members affected by these acts of violence toward members of the Coast Guard family. The charged offenses have a detrimental effect on the reputation of the Coast Guard and the morale of Coast Guard personnel of the U.S. Coast Guard Support Center New York, U.S. Coast Guard Group New York, and Coast Guard Commands in Juneau, Alaska. Because of the high mobility of Coast Guard personnel, such charged offenses have a similar effect on other Coast Guard commands who are aware of the threat to Coast Guard families posed by child abuse. All of the witnesses are assigned within 300 miles of New York. Because the accused and the victim's family has been transferred from Juneau, Alaska, Alaskan Authorities are unlikely to prosecute these offenses in civilian courts.

BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER, THIRD COAST GUARD DISTRICT,
GOVERNORS ISLAND, NEW YORK

(Title omitted in printing)

Motion to Dismiss Charge I, Specifications 11-15, Charge II,
Additional Charge I, Additional Charge II, Specifications 1-2,
and Additional Charge III

Now comes the accused by and through detailed defense counsel and moves that this court dismiss Charge I, Specifications 11 through 15, Charge II, Additional Charge I, Additional Charge II, Specifications 1-2, and Additional Charge III for lack of court-martial jurisdiction over the offenses.

Charge I, Specifications 11 through 15, Charge II, Additional Charge I, Additional Charge II, Specifications 1-2, and Additional Charge III allege sufficient facts for the hearing officer, convening authority and district legal officer to conclude that there is no jurisdiction over the offenses with which the accused is charged since the offenses are not even remotely service connected. The offenses allegedly occurred at 8916 Birch Lane, Juneau, Alaska, a privately owned residence within the territorial limits of the United States, 11 miles from the nearest military installation. The alleged victims, Amber L. Johnson and Jennifer L. Grantz are dependents of a service member but were clearly not engaged in the performance of any duties relating to the military. Finally, the offenses were committed during peacetime and the offenses are clearly among those traditionally prosecuted in civilian courts.

Since Charge I, Specification 11 through 15, Charge II, Additional Charge I, Additional Charge II, Specifications 1-2, and Additional Charge III allege offenses which are not service connected they must be dismissed for lack of court-martial jurisdiction.

/s/ ANDREW M. HOCHBERG
Andrew M. Hochberg
LT, USCGR
Detailed Defense Counsel

(Certificate of Service omitted in printing).

BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER, THIRD COAST GUARD DISTRICT,
GOVERNORS ISLAND, NEW YORK

(Title omitted in printing)

Memorandum of Law in Support of Motion to Dismiss

Statement of Facts

Yeoman First Class Richard Solorio while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska lived at 8916 Birch Lane, Juneau, Alaska. The residence at 8916 Birch Lane was privately owned by YN1 and Mrs. Solorio and purchased on 1 April 1981. During the entire period in question, 25 March 1982 through 30 June 1983, Chief Warrant Officer Larry V. Johnson and his family lived next door to the Solorio's in a privately owned residence on Birch Lane. The neighborhood consisted entirely of privately owned residences. Aside from YN1 Solorio and CWO2 Johnson, YN1 Solorio knew of only one other Coast Guard member in the neighborhood. During the period in question 25 March 1982 through 5 June 1984, Yeoman Second Class Frank Grantz lived in a privately owned trailer in a trailer park in Juneau, Alaska in a different neighborhood.

During the period of time the Solorio's lived in Juneau, YN1 Solorio was an E-6. His wife Toni Solorio was employed for some time by the United States Forest Service. After leaving the Forest Service, Mrs. Solorio was self employed as a licensed day care operator. Her income producing ability was a significant factor considered by the lender, the First National Bank of Anchorage, in deciding to take a mortgage from the Solorio's. Mrs. Solorio's income was at all times sufficient to cover all or most of the monthly mortgage payments.

CWO2 Johnson and YN1 Solorio became friends as a result of their being next door neighbors. YN1 Solorio became acquainted with Amber Johnson after Amber, and Brian and Manuel Solorio had become friends. Amber would spend time at the Solorio's home and Brian and Manuel would also play at the Johnson residence. Also, the Solorio's would socialize with the Johnson's in their homes. There was no significant contacts between Amber Johnson and YN1 Solorio on a military base or in any Coast Guard facility.

YN2 Frank Grantz and YN1 Solorio became friends as a result of their association with a Juneau's Mens City Basketball League.

They also were associated with each other as President and Treasurer of a youth bowling league in Juneau. YN1 Solorio became acquainted with Jennifer Grantz as a result of his friendship with YN2 Grantz and as a result of Jennifer's friendship with YN1 Solorio's sons. Jennifer also competed on a youth bowling league team and was assigned to the city league soccer team coached by YN1 Solorio. Both youth leagues were sponsored by the city with civilians and Coast Guard dependents participating. There were no significant contacts between Jennifer Grantz and YN1 Solorio on a military base or in any Coast Guard facility.

YN1 Solorio rarely commuted to work with CWO2 Johnson or YN2 Grantz and only worked with YN2 Grantz for about a week near the end of Grantz' tour at CCGD17.

YN1 Solorio has been charged with taking indecent liberties with and committing indecent acts upon Melissa Carney, Jennifer Scott, Amber Johnson and Jennifer Grantz. YN1 Solorio has also been charged with unlawfully touching Amber Johnson and Jennifer Grantz. Only the crimes alleged to have been committed against Melissa Carney and Jennifer Scott occurred on a military base.

THE ACCUSED'S ALLEGED OFFENSES UNDER THE CIRCUMSTANCES OF THE CASE CONSTITUTE INSUFFICIENT SERVICE CONNECTION TO CONFER COURT-MARTIAL JURISDICTION OVER THE ACTS WHICH TOOK PLACE OFF BASE.

In order to determine whether an offense committed off-base by a service member is service-connected within the meaning of *O'Callahan v. Parker*, 395 U.S. 258, 89 S.Ct. 1683 (1969), and consequently, whether it is triable by court-martial, the jurisdictional criteria enunciated in *Relford v. Commandant*, 401 U.S. 355, 91 S.Ct. 649 (1971), must be carefully weighed. *United States v. Moore*, 1 M.J. 488 (1976). The issue turns on gauging the impact of an offense on military discipline and effectiveness, on determining whether the military interest in deterring the offense is distinct from and

greater than that of civilian society, and on whether the distinct military interest can be vindicated adequately in civilian courts. *Schlesinger v. Councilman*, 420 U.S. 738 at 760, 95 S.Ct. 1300 (1975). Jurisdiction may not be predicted solely upon the military status of both the wrongdoer and the victim. *United States v. Hedlund*, 2 M.J. 11, 14 (CMA 1976). Court-Martial jurisdiction has never been exercised when the sole basis was dependent status of the victim, *See, e.g. O'Callahan* at 274, 89 S.Ct. 1691, n 19.

Military courts-martial do not share the federal judicial power define in Article III of the United States Constitution. They are not courts of general jurisdiction, but possess only the power conferred upon them by Article I, Section 8, Cl.14 of the Constitution. Military tribunals are not subject to certain requirements applicable to Article III courts such as indictment by a grand jury, jury trial and a unanimous verdict in order to reach a finding of guilty as to the offenses charged. The exercise of court-martial jurisdiction must be limited to the minimum possible scope adequate to the end proposed, *Toth v. Quarles*, 350 U.S. 11, 23, 76 S.Ct. 1, 8 (1955). Military jurisdiction is authorized only where actually necessary to the maintenance of military discipline. *O'Callahan v. Parker*, 295 U.S. 258, 265, 389 S.Ct. 1683, 1687 (1969).

In the case before us the exercise of court-martial jurisdiction over the offenses allegedly committed against Amber Johnson and Jennifer Grantz would far exceed the minimum possible scope adequate to the end proposed. The criteria for determining the necessary scope of military jurisdiction were established in *O'Callahan* and set forth in detail in *Relford v. Commandant*, 401 U.S. 355, 365, 91 S.Ct. 649, 655 (1971). In the instant case, there is not a single *Relford* factor which would tend to indicate that jurisdiction lies in a court-martial. The *Relford* factors will be stated as they apply to the case.

1. The serviceman's proper absence from the base: Since there is no allegation that YN1 Solorio was even UA during his tour in CCGD17 he must have been on liberty or authorized leave during the time the alleged offenses took place.

2. The crime's commission away from base: 8916 Birch Lane is a privately owned residence in a community not pri-

marily made up of Coast Guard families and approximately 11 miles away from the nearest military facility.

3. Its commission at a place not under military control: There are no government quarters or leased housing in Juneau, Alaska except for the Admiral's home.

4. Its commission within U.S. Territorial limits: Alaska is a state.

5. Its commission in peacetime: Undisputed.

6. The absence of any connection between the defendant's military duties and the crime: All significant contacts between YN1 Solorio, Amber Johnson and Jennifer Grantz were wholly unrelated to YN1 Solorio's military duties or any other Coast Guard related activity.

7. The victim's not being engaged in the performance of any military duty: Amber Johnson and Jennifer Grantz, as dependents of service members, had no military or military-related duties.

8. The availability of civilian courts in which the case can be prosecuted: Alaska has civilian criminal courts available to prosecute these cases.

9. The absence of any flouting of military authority: There was no relationship with military authorities involving the offenses alleged to have occurred in a privately owned residence on off-duty time in Alaska.

10. The absence of any threat to a military post: The offenses allegedly occurred approximately 11 miles from any military installation.

11. The absence of any violation of military property: No military property nor the property of any servicemember was involved in the commission of any offenses charged.

12. The offenses are those traditionally prosecuted in civilian courts: The alleged offenses are not purely military and are traditionally handled by civilian courts and civilian support personnel. The fact that Alaska has presently deferred prosecution of the case to the Coast Guard is an insufficient basis upon which to predicate military jurisdiction. See *United States v. McCarthy*, 2 MJ 26, 29 (CMA 1976).

A review of the *Relford* factors makes it clear that the balance is weighted heavily in favor of concluding that this

court-martial lacks jurisdiction to try the offenses allegedly committed in Alaska by YN1 Solorio. The government, on the other hand, can allege only the remotest relationship between the alleged offenses and the military. The fact that a few Coast Guard members live in a community does not lead to the conclusion that the offense occurred on or near a military base. Many service members live in New York city, but that fact does not make New York a military community. The fact that a Coast Guard Social Worker interviewed an alleged victim at the government's request cannot be sufficient to confer subject matter jurisdiction on a court-martial. If that was enough, all cases tried by court-martial would be service connected based simply on the dedication of military personnel to the case. Finally, the mere fact that Coast Guard personnel have a high degree of mobility does not negate the availability of a civilian court in which the case could be prosecuted. In fact, Alaska would reconsider exercising jurisdiction should court-martial jurisdiction be lacking. All service members are mobile. That fact alone does not confer jurisdiction on a court-martial.

In *Relford v. Commandant*, the Supreme Court also noted nine other considerations in determining whether an offense had sufficient service connection to confer military jurisdiction. These other considerations will be discussed in connection with the facts in this case:

a. *Security of persons and property on base.* The offense as alleged did not occur on base, nor was any military property violated on base.

b. *Commanding Officer's responsibility for maintenance of order.* Order and discipline in the CCGD17 was never even remotely affected by the alleged offenses. In fact the offenses did not even come to light until one or two years after all the parties left the Seventeenth District.

c. *The impact and adverse affect caused by the commission of a crime on base, thus violating the bases very security, has upon morale, discipline, reputation, and integrity of the base itself.*

Since the offenses allegedly occurred off-base, neither the base's security nor its morale, discipline or integrity have

been impacted. Any impact these offenses may have will only be realized long after the incidents were alleged to have occurred while the victims are living far from the scene of the alleged crimes. Any such impact can only be categorized as remote and indirect and have no effect on the integrity of the base itself. The cases discussing a crime's effect on the morale or integrity of a military base have always emphasized that the impact must be clear and measurable. *United States v. Shorte*, 1 MJ 518, 520 (AFCMR 1984). See also, *United States v. McCarthy*, 2 MJ 26, 29 (CMA 1976) (the military interest was pervasive and the threat to the morale and discipline on base was actual and immediate).

In *United States v. Lockwood*, 15 MJ 1, (CMA 1983), the Court noted that the affect on morale "cannot be ignored in determining the service connection of off-post offenses." *Id.* at 10. In *Lockwood*, however, the affect on morale was direct and substantial since the offense involved the theft of a wallet from the accused's roommate on base, *Id.* at 7, and the Court found that the service member whose signature was forged was among the victims of the crime. *Id.* at 9. The impact upon morale was realized immediately, and not years after the commission of the crime.

d. *Congress' power under Article 1, Section 8, Clause 14 of the constitution to punish offenses.* This authority is limited by the Supreme Court's requirement of service connection as discussed in the *O'Callahan* and *Relford* cases. For all the reasons set forth herein there is insufficient service connection to justify the exercise of congress' powers.

e. *The possibility that civil courts may not entertain prosecution, and the need to vindicate disciplinary authority in the military community.* Because the need to vindicate military disciplinary authority is subject to the service connection limitation, the offense alleged here is too attenuated in its connection with the military community, however defined, to justify military jurisdiction. Further, Alaska will reconsider exercising jurisdiction if these offenses are found not to be service connected.

f. *Geographical and military relations may support jurisdiction.* The offenses are alleged to have occurred away from base when YN1 Solorio was removed from all military duties.

g. This alleged offense is not a crime against any person associated with or on a military base.

h. *Undue restriction of O'Callahan to military offenses.* While court-martial jurisdiction is not limited to strictly military offenses, such military jurisdiction cannot reach so far to a servicemen's off-duty life that it offends the limitations placed on military authority by the Supreme Court and the Court of Military Appeals. No concept of "pendent" military jurisdiction can be alleged here since the offenses in Alaska and New York do not arise from a common nucleus of operative fact. See *United Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138 (1966).

i. *Distinctions between a post military and non-military areas.* These offense are alleged to have occurred far off base not during duty hours.

It is clear from the undisputed facts that the primary basis upon which the government claims subject matter jurisdiction is the fact that Amber Johnson and Jennifer Grantz are dependents of service members. Any other bases which the government may allege are merely bootstrapped from the dependent status of the victims.

In three cases directly on point with the instant case, the Court of Military Appeals stated unequivocally that sex offenses committed off base against dependents of service members are not service connected. In *United States v. McGonigal*, 41 CMR 95 (CMA 1969), the accused was charged with one specification each of sodomy and indecent liberties with a child under the age of 16. Since the incidents took place in the civilian residence of a service member in Colorado Springs, Colorado, the offenses were held to be not service connected. *Id.* at 95. (Colorado Springs is the home of the U.S. Air Force Academy, Fort Carson, and Peterson Air Force Base. Colorado Springs is undoubtedly a popular housing area for military personnel.). The court stated that "[a]bsent such [service] connection and where the offense is cognizable in the civil courts which are open and functioning, an accused may not be denied his right to the benefits of indictment and trial by jury." *Id.*

In *United States v. Henderson*, 40 CMR 313 (CMA 1969), the accused was charged with two specifications of carnal

knowledge with a female under the age of 16. Even though the accused met the dependent daughter of a serviceman on base, the offense was not service connected since the incidents occurred in the accused's off-base apartment. The court stated that only "the status of the victim as a military dependent and the fact of their meeting on base" differentiate *Henderson* from *O'Callahan*. *Id.* at 314. Since whatever service connection there was "was natal not legal," the court-martial was without jurisdiction to proceed. *Id.* The court further stated that the activities in question were not in any manner premised on the accused's status as a service member. Likewise, in the instant case, the alleged offenses are premised on YN1 Solorio's status as the father of Amber Johnson's and Jennifer Grantz' playmates and not on his military status. As was the case in *McGonigal* and *Henderson*, the offenses alleged to have been committed by YN1 Solorio against military dependents in a privately owned residence cannot be considered service connected.

The distinction between on base and off base sex offenses committed by service members was analyzed by the Court of Military Appeals in *United States v. Shockley*, 40 CMR 322 (CMA 1969). There, various sex offenses by a servicemember against his stepson took place first in their off base residence and continued after the family moved into government quarters. The court held that the offenses occurring off-base were not service connected, but the offenses which took place on base in government quarters were. *Id.* at 323.

The court's ruling in *Shockley* is clearly applicable to the instant case. The offenses which YN1 Solorio allegedly committed involving Melissa Carney and Jennifer Scott occurred on Governors Island and are unquestionably within court-martial jurisdiction. *See Relford* at 369, 91 S.Ct 657. Beyond question too is the fact that the offenses involving Amber Johnson and Jennifer Grantz are not even remotely service connected and as such are beyond court-martial jurisdiction.

That the above cited cases remain good law is indicated by the Court's ruling in *United States v. Rappaport*, 19 MJ 708 (AFCMR 1984) decided 30 November 1984. There the accused was charged with committing a sex offense against a

female Air Force officer. The court considered the twelve *Relford* factors and concluded that since the offense took place off base and had no connection with the accused's military duties, the offenses were not service connected and the court-martial lacked jurisdiction to try it. *Id.* at 711-12.

Rappaport is unlike those cases where court-martial jurisdiction obtained over off base offenses committed against service members. While the Court of Military Appeals has long recognized that military status of the victim, alone, was insufficient to establish subject matter jurisdiction, *Hedlund* at 14, *see also United States v. Wilson*, 2 MJ 24 (CMA 1976), it has also recognized that jurisdiction will attach over such offenses if other significant factors are present. For example, in *United States v. McCarthy*, 2 MJ 26, 29 (CMA 1976), service connection was established by the formation of criminal intent on post, the substantial connection between the accused's military duties and the crime, the fact that the accused knew the transferee was engaged in the performance of military duties at the time of the transfer, and the threat posed to the military community. *Id.*

In *United States v. Shorte*, 18 MJ 518 (AFCMR 1984) the off base offense against another service member was the culmination of a chain of events that began on base and which resulted in the victim being hospitalized for twelve days and thus unable to perform his military duties. The court found that in addition to the status of the victim, the offense had a "clear and measurable impact on the morale, reputation and integrity of the installation." *Id.* at 520. *See United States v. Hollis*, 16 MJ 954, 955 (AFCMR 1983) *pet. denied* 17 MJ 53 (CMA 1984) (morale was affected since the victim was a member of the same squadron as the accused), *United States v. Brauchler*, 15 MJ 755, 757 (AFCMR 1983) (essential preliminary acts were committed on base), *United States v. Rugiero*, 1 MJ 1084, 1097-98 (NCMR 1977) (but for the day to day military relationships between the accused, and the victim, the accused would not have had the opportunity to commit the offense), *United States v. White*, 1 MJ 1048, 1049-50 (NCMR 1976) (but for the significant military relationships, the accused would not have become acquainted with the victim, or known of her availability).

In the case before us, the sole link is the dependent status of the alleged victims. Criminal intent was not formulated on base, and no preliminary acts were initiated on base. Although YN1 Solorio and the victims' fathers were assigned to the same Coast Guard district, the relationships that developed were wholly unrelated to any Coast Guard functions. Those relationships developed primarily as a result of the relationship between the alleged victims and YN1 Solorio's sons. The fact that YN1 Solorio, CWO2 Johnson, and YN2 Grantz were assigned to the Seventeenth District had no bearing on the relationship between the families. That relationship would have developed in any event as a result of the Johnsons living next door to the Solorios and as a result of the children's involvement in school and after school activities.

Off base sex offenses against civilian dependents of service members have been found to be service connected when dependent status was one of many factors considered by the court. For example, in *United States v. Wierzba*, 11 MJ 742 (AFCMR 1981), the court found the following:

(a) that the accused used his status as an active duty Air Force member in a scheme to prey upon Civil Air Patrol Cadet victims; (b) that he used his on base housing and erotic materials contained therein, in this same scheme; (c) that he used his Air Force status, and resultant access to base, to victimize Air Force dependents whom he picked up in his car at their on base residences; and (d) that, by such conduct, he violated the personal security of Air Force families residing on an Air Force base, (e) and disgraced the public image of both the United States Air Force and its Auxiliary Civil Air Patrol.

Id. at 743-44.

The only similarities between *Wierzba* and the case before us is the involvement of military dependents in sex-related offenses. The Court of Military Appeals and the Courts of Military Review have been consistent in finding service connection only in cases where other significant facts aside from the status of the victims tip the balance in favor of the exercise of subject matter jurisdiction. See *Wilson*, at 25-26.

Notwithstanding the fact that *McGonigal*, *Henderson*, and *Shockley* remain good law, the Government may seek to rely on *U.S. v. Lockwood* in support of its argument that the Court of Military Appeals has extended court-martial jurisdiction to include the offenses involving Amber Johnson and Jennifer Grantz.

In *Lockwood*, the Court considered a number of *Relford* factors and considerations in arriving at its conclusion that subject matter jurisdiction was established over Lockwood's off base offenses. Lockwood's on base theft from his roommate of another airman's wallet "was an essential step in a course of conduct that led directly to the [off base offenses]." *Lockwood* at 7. Thus, the off base offenses were part of a common nucleus of operative fact that began on base and which would not have occurred in the manner they did without the initiation of the crime on base. The Court found that the "Armed Services have an interest in punishing a crime which is initiated within a military enclave, even if the offense is consummated off post," *Id.* at 8, based on "[t]he essential and obvious interest of the military in the security of persons and of property on the military enclave." *Id.* citing *Relford* 401 U.S. at 397, 91 S.Ct. at 656. The Court emphasized that the off base larceny and forgery had a direct and substantial effect on base in that one of the victims of the forgery was Sage, the servicemember whose signature was forged. *Id.* at 9.

In the instant case, the off base and on base offenses have no nexus in time, place or circumstance. Further, the offenses alleged to have been committed in Alaska against civilian dependents were not initiated on a military base and did not violate the security of persons or property within the enclave. The few instances where Jennifer Grantz or Amber Johnson saw YN1 Solorio while he was on duty were wholly unrelated to any offense alleged.

In *Lockwood*, use of military property, the I.D. card, was considered by the Court to be a flouting of military authority. *Id.* at 8-9. As was the case in *Wierzba*, 11 MJ at 743, Lockwood used his claimed status as a service member to perpetrate the off base larceny and forgery. The government can not claim that YN1 Solorio flouted military authority or

that he used his military status to perpetrate the alleged offenses in Alaska. At best, the government can only establish that YN1 Solorio's status as a neighbor and a friend involved in civilian activities laid the basis for the alleged offenses.

Finally, the Court in *Lockwood* found that "in light of the impact of [Lockwood's] offenses upon persons assigned at Sheppard Air Force base and the morale, reputation, and integrity of the base itself," the offenses were service connected. *Lockwood* at 10. This finding stresses the direct impact of the offenses upon service member victims. It also stresses the impact upon the base itself in that the security of persons and property on base were violated. It does not, however, lay down a broad rule that all offenses which in some way impact upon the morale, reputation, and integrity of the military in general will be service connected. Such a rule would make the service connection requirement a mere formality.

A review of *Relford*, *McCarthy*, *White*, *Hollis*, and *Shorte* reveals that the impact upon morale, when coupled with other significant factors, must directly and substantially affect the base at which the accused is assigned at the time of the offense. In the case before us, the offenses alleged to have been committed in Alaska can only indirectly affect military discipline and effectiveness long after the offenses were alleged to have been committed. Although Amber and Jennifer's need for counselling is a concern of their parents, the same impact on morale, military discipline and effectiveness would be realized if the perpetrator was a civilian neighbor or friend. The military status of the accused, wholly unrelated to any impact, the offenses may have upon the military, may not serve as a basis for court-martial jurisdiction.

Conclusion

In *Lockwood*, the Court examined and found a number of factors and considerations which clearly established court-martial jurisdiction. An examinations of *O'Callahan*, *Relford*, *Rappaport*, *McGonigal*, *Henderson*, *Shockley*, *Wierzba*, and *Lockwood* must lead to the inevitable conclusion that the facts which the government will be able to prove at trial do not

establish any one of the *Relford* criteria or considerations. Rather, the facts fit squarely within the long established principle that where:

crimes are committed upon or against *civilians*, and not at or near a military camp or post, or in breach or violation of a military duty or order, they are not in general to be regarded as within the description of the Article, but are to be treated as civil rather than military offenses.

O'Callahan at 274, 89 S.Ct. at 1691, n. 19, *citing* W. Winthrop, *Military Law and Precedents*, 1124-25 (2d ed. 1896, 1920 reprint) (emphasis in original).

For the abovementioned reasons, the offenses involving Amber Johnson and Jennifer Grantz are not service connected and must be dismissed.

/s/ ANDREW M. HOCHBERG
Andrew M. Hochberg
LT, USCGR
Detailed Defense Counsel

(Certificate of Service omitted in printing).

BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER, THIRD COAST GUARD DIS-
TRICT, GOVERNORS ISLAND, NEW YORK

(Title omitted in printing)

Brief in Support of Subject Matter Jurisdiction

R.C.M. 201 and 203 set out the jurisdictional requirements for courts-martial. The accused, through counsel, argues that this court does not have subject matter jurisdiction over the offenses that took place in Alaska. The government, in the jurisdictional statement attached to the charge sheets and in a bill of particulars provided to the accused prior to the Article 32 Investigation, has placed the defense on notice of the jurisdictional basis for the Alaska offenses. Briefly, the government contends that child sexual abuse committed by a Coast Guard member by victimizing Coast Guard dependents, has such a substantial and dramatic impact on the effectiveness of the military parent of the victim, on the morale of the unit and the service, on reputation of the service in the community, on the military working relationships among the military members involved and on the trust for other Coast Guard members that is necessary when the military member is transferred PCS or TAD or deploys, that there is a unique military interest sufficient to confer court-martial subject matter jurisdiction over the offense.

Although at one time, any offense committed by a member of the armed forces was triable at court-martial by virtue of the accused's status as a service member, *Kinsella v. United States ex rel Singleton*, 361 U.S. 234 (1960), that view was rejected by the Supreme Court in *O'Callahan v. Parker*, 395 U.S. 258 (1969). There it was held that the offense must be "service connected" before the court-martial could have jurisdiction over the offense. Since 1969, the issue of military courts-martial jurisdiction has been dealt with repeatedly by the military trial and appellate courts. In essence, the rule on service connection has evolved to the point where today, each case in which an issue of service connection arises is dealt with on a case-by-case basis, whether the offense occurs on base or off base. Careful attention is paid to the precise set of facts surrounding the offense that has occurred. See *Relford*

v. Commandant, 401 U.S. 355 (1971); *Schlesinger v. Councilman*, 420 US 738 (1975). The breadth of military jurisdiction over off base offenses is not precisely defined by any *per se* rule. See *United States v. Rock*, 49 CMR 235, 237 (AFCMR 1974).

The offense in *United States v. Solorio* deals with crimes that occurred off base at the defendant's home in Juneau, Alaska involving Coast Guard dependents. Normally the occurrence of a crime on base suffices in and of itself to establish service connection. *Relford, supra*. However, crimes that occur off base may also be service connected. *United States v. Trottier*, 9 MJ 337 (CMA 1930); *United States v. Rock*, 49 CMR 235 (AFCMR 1974). This is particularly true where, as here, the off base crime has a significant impact on the moral, security and readiness of military members working on base, on the reputation of the service, and poses a threat to the base and to military members and their dependents. Just as a "State and its citizens may be adversely affected by conduct that occurs inside its boundaries; sometimes the State will seek to punish that conduct. Similarly, a country and its citizens may be injured by activities that take place beyond its frontiers, so it may seek to prohibit that conduct. In like fashion, the conduct of servicemen which takes place outside a military enclave is service connected and subjected to trial by court-martial if it has a significant effect within that enclave." *United States v. Lockwood*, 15 MJ 1, 15-6 (CMA 1933).

United States v. Lockwood, supra, stands for the accepted jurisdictional principle that courts-martial may properly try any offense which is referred to it where there is a significant impact upon persons assigned at the base and which adversely affects the moral, reputation, and integrity of military personnel and the military base itself. Chief Judge Everett, writing the majority opinion, stated that the reason behind the holding is that:

"Few military enclaves are self-sufficient and usually the servicemen assigned to a post and their dependents must rely on persons in the surrounding communities for various types of support—such as housing, credit, and

recreation. An offense committed by a servicemember near a military installation tends to injure relationships between the military community and the civilian community and thereby makes it more difficult for servicemembers to receive needed local support."

Additionally, Chief Judge Everett recognized that a military organization has an interest in maintaining a good reputation, and he specifically noted: "it should be apparent that, for a nation which now relies on an All-Volunteer Force obtained by recruitment and which needs to retain in uniform 'career soldiers' skilled in the technology of modern warfare, maintaining the 'reputation' and 'morale' of the Armed Services is essential." *Lockwood* thus represents an evolutionary change in how the Court of Military Appeals views the service connection issue. Mechanistic jurisdictional rules reciting the military status of victims or the situs of the offense, have given way to a flexible jurisdictional analysis that focuses on the impact that off base offenses have on the military's morale, readiness and reputation.

The state of military law concerning the service connection of off base sexual offenses has undergone evolutionary changes not dissimilar to the evolutionary jurisdictional holdings in off base drug offenses. Before the *O'Callaghan* case, all off base drug offenses were service-connected. See, e.g., *United States v. Beeker*, 18 USCMA 563, 40 CMR 275 (1959) (use of drugs on or off base has "singular military significance"). After *O'Callaghan* and *Relford*, the service-connection analysis changed radically for off base drug offenses. Off base drug offenses, as recently as five years ago, were mechanically analyzed in terms of *O'Callaghan-Relford* categories and, in most cases, no military jurisdiction was found.

From 1969 to 1980 off base drug offenses in increasing numbers were beyond the jurisdiction of military courts. Finally, *United States v. Trotters*, 9 MJ 337 (CMA 1980) stopped the madness of court-martial impotence in the face of the drug threat to military readiness. The *Trotter* court questioned whether "this court should have been so slavish in

applying these *Relford* criteria . . .", and cited *Scheslinger v. Councilman*, 420 U.S. 738, 760, 95 S.Ct. 1350, 1314, 43 L.Ed.2d 591 (1975) to support a more flexible analysis:

"[the issue of service connection] turns in major part on gauging the impact of an offense on military discipline and effectiveness, on determining whether the military interest in deterring the offense is distinct from and greater than that of the civilian society, and on whether the distinct military interest can be vindicated adequately in civilian courts. These are matters of judgment that often will turn on the precise set of facts in which the offense has occurred. . . . *More importantly*, there are matters as to which the expertise of military courts is singularly relevant, and their judgement indispensable to inform any eventual review in Art. III courts."

But the changes in military and civilian societies, particularly the concern about drug use in the military, forced a new analysis of service-connection in off base drug offenses. The *Trotter* court recognized the simple fact that "drug abuse in the military is a most serious problem. . . . Our military forces include large numbers of young persons who are major targets for drug vendors and the nature of whose lives may create a special vulnerability to drug use. And it is very difficult to predict where drugs will travel—and into whose hands—where they are possessed in substantial quantity or are being distributed by service personnel in the vicinity of a military installation." Post-*Trotter* analysis, in contrast to post-*Relford* analysis, normally finds military jurisdiction in off base drug offenses based on the following rationales: 1) the *Relford ad hoc* factors demand flexible jurisdictional analysis based on changed conditions in military and civilian societies (9 MJ at 345); 2) the fine line of military readiness between peace and hostilities requires discipline and readiness at all times, (9 MJ at 347); 3) the unlikelihood of civilian prosecution of all drug offenses by military members off base (9 MJ at 352). The *Trotter* Court also cited additional *Relford* considerations as justifying military jurisdiction over off base drug offenses: 1) the obvious command interest in the security of persons moving in and out of the

military enclave: 2) the interest of the military commander in maintaining order and discipline; 3) the Congressional power to make "Rules and Regulations for the land and Naval forces" permits the regulation of areas beyond "purely military offenses" and 4) the civilian courts' inability to vindicate distinctly military interests in drug offenses.

Although post-*Trottier* off base drug cases almost invariably are held to be within military court-martial jurisdiction, the appellate cases seem to find service connection from the threat to the military installation of an off base drug user, possessor, or seller. The primary threat that justifies service connection is not that the accused may in fact be "under the influence" of drugs, when he returns to the base but that the threat that service members without respect for laws and regulations may at *any time* be under the influence, and may also infect other service members with the bad influence of their lawless example, thus damaging the cohesiveness, military responsiveness, morale and reputation of the service. 15 MJ At 10.

In the area of off base sex offenses by service persons, there has been a similar evolution toward a finding of service connection. The cases cited by the counsel for the accused represent the traditional mechanistic post-*O'Callaghan-Relford* analysis. In *U.S. v. Mc-Conigal*, 41 CMR 95 (CMA 1969) the court held that off base offenses of sodomy and indecent liberties with a daughter of another serviceman under the age of 16 were held to be not service connected. In *U.S. v. Shockley*, 18 USCMA 610, 40 CMR 322 (1969) held that off base child abuse offenses against the accused's stepdaughter were not service connected while on base offenses were service connected where the victim was the accused's stepson. The court used an on base/off base litmus test and held that the military was responsible for security on base and that that was sufficient to vest jurisdiction. Finally in *U.S. v. Rapaport*, 19 MJ 708 (AFCMR 1984) the court held to be non-service connected an off base sodomitical relationship between accused and a former servicewoman. The victim was apparently not in the service at the time of the offense and had no relationship to the service. Bot *McGonigal* and

Shockley, decided in 1969 immediately after *O'Callaghan*, have been overtaken by the modern and flexible *Lockwood* analysis for service connection.

Lockwood emphasizes the effects of the off base offense on the service, effects such as: 1) impacts on on base security and combat readiness of off base offenses (15 MJ at 5); 2) judicial economy/judicial logic of disposing of all related offenses in one forum (15 MJ at 7-8); 3) the special military interest in prosecuting crimes by service members (15 MJ at 8); 4) the impact of off base crimes on the reputations and lives of other innocent service persons (15 MJ at 9); 5) the proximity of the off base offense to the base or other military persons (15 MJ at 9); 6) the injury to military-civilian community relationships on which military services depend for community support services (15 MJ at 9); 7) the injury to the morale, discipline, and integrity of the base and the military service (15 MJ at 9); 8) the injury to the service's reputation in the all-volunteer era (9 MJ at 9-10); 9) the injury to the moral and reputation of service personnel who must operate in high stress, high responsibility and high-tech missions (9 MJ at 10); 10) the need for periodic reexamination of service-connection in light of changes in the military and in society (15 MJ at 10). The court analogized these on base impacts of off base criminal acts to the jurisdiction of a state to punish conduct occurring outside the state that adversely affects the state or its citizens. In a footnote to *Lockwood*, the court gave an example of such in-state impacts from out-of-state activities. The Uniform Reciprocal Enforcement of Support Act authorizes a state to punish an out-of-state parent for failure to support an in-state dependent. 15 MJ at 5n.4.

The *Lockwood* analysis of the impacts on the service's reputation, morale and effectiveness arising out of off base crimes have been recognized in many modern military cases that find service connection in off base sex offense cases. In *United States v. Hollis*, 16 MJ 954 (AFMCR 1933), a male airman was accused of an off base rape of a female airman. The Air Force personnel involved were members of the same unit who knew each other socially; they drove from the base, 25 miles to a religious shrine where the rape took place. Jurisdic-

tion rested not upon the status of the victim alone, but on 1) the thrust the victim had in fellow servicemen; 2) the military commander's perception that failure to prosecute would damage internal morale and effectiveness; and 3) the fact that the military had a greater interest in prosecution of the case than did the civilian community. 16 MJ at 955-56. The local district attorney also noted that the entire investigation was performed by military personnel, that the local police and courts had not been involved in the case, that judicial economy would favor resolution in one forum and that the emotional strain on the witness/victim/defendant would be minimized by one trial forum. 16 MJ at 957.

In *U.S. v. Brachler*, 15 MJ 755 (AFCMR 1983) the accused was charged with off base indecent acts and indecent assaults. Although the victims were subordinate service-women, the court balanced all *Relford* factors, refusing to employ the victim's military status as a simple litmus test. The court noted that 1) certain preliminary acts to the assaults took place on base; 2) both parties were in uniform and were in a superior-subordinate military relationship; 3) there was a significant threat to the maintenance of good order and discipline; and 4) the distinctly military interest could only be vindicated in a military trial. 15 MJ at 755.

In *United States v. Mauck*, 17 MJ 1033 (ACMR 1984) the court rejected the on post off post distinction as a litmus test for service connection: "The border of a military post is not a demarcation line where court-martial jurisdiction ends."

In *U.S. v. Shorte*, 18 MJ 518 (AFCMR 1984) the court considered an off base assault by one serviceman against another serviceman. The court did not find service connection based on the status of the victim, but used a *Lockwood* analysis of impacts on base, stating that "we base today's holding that military jurisdiction exists on the fact that the military has a distinct and greater interest in the prosecution than does the civilian community." The court noted the many factors to be considered: 1) status of victim; 2) chain of events starting on base; and 3) loss of useful work by the victim injured by accused.

All of these cases demonstrate there is a new flexible jurisdictional concept of service connection in off base sex offenses arising out of a changed military society. The *Lockwood* analysis requires a 1) case-by-case balancing of all *Relford* criteria and considerations; 2) an acknowledgement of changed conditions in military and civilian life that requires a slightly different balance of jurisdiction from time-to-time; and 3) a closer look at the impacts that off base offenses have on the morale, reputation and effectiveness of service persons, persons on base and the service in general.

In relation to the charges preferred against YN1 Solorio, a case-by-case balancing of *Relford* factors and considerations is necessary. The changed military and civilian factors that must be considered are legion, but include the following:

1. The importance of a stable and supportive family in fostering a secure, attentive, happy, and productive service person. See Family Advocacy Program, COMDTINST 1750.3 dtd 3 APR 1983 (especially discussion, and policy and procedure sections); Your Coast Guard Career, COMDTINST P1750.4 (especially chapters on family life, civilian support services, support networks, participation in local community.

2. The incidence of child abuse in military community and the factors in military life that can exacerbate abusive situations. See Child Protection in Military Communities, U.S. Dept. of Health and Human Services (National Center on Child Abuse and Neglect) (May 1980).

3. The Coast Guard's reliance on off base housing and off base community services to provide attractive and wholesome duty stations for Coast Guard members and their families. See Your Coast Guard Career, COMDTINST P1750.4.

4. The PCS mobility of Coast Guard personnel with their dependents which decreases the civilian law enforcement and civilian judicial systems' motivation and ability to investigate and prosecute off base offenses and which increases the uniquely military interest in prosecuting off base offenses of transferred service persons involving transferred Coast Guard dependent victims.

5. The damage to the reputation, and morale of the servicemember parent, the Coast Guard family involved, the base and the service in general.

Because of many of these factors, the law of service connection on off base offenses with military dependents as victims has undergone an evolution toward military jurisdiction that is similar to the evolution of marijuana and sexual abuse cases. In *U.S. v. Snyder*, 20 USCMA 102, 42 CMR 294 (1970) the court held there was no service connection to charges of off base involuntary manslaughter where the victim was a dependent infant. In accord *U.S. v. Boys*, 13 USCMA 547, 40 CMR 259 (1959); *U.S. v. Sharkley*, 18 USCMA 610, 40 CMR 322 (1969); *U.S. v. Henderson*, 18 USCMA 501, 40 CMR 313, (1969); *U.S. v. McGonigal*, 19 USCMA 94, 41 CMR 94 (1959). All cited cases were the immediate reaction in 1969 to *O'Callaghan v. Parker*, 395 US 258, 89 S.Ct. 1683 (1969).

The modern trend in cases involving dependents is typified by *U.S. v. Wierza*, 11 MJ 742 (AFCMR 1981), a pre-*Lockwood* cases that uses a *Lockwood* analysis of service connection. The case involved an Air Force Sergeant accused of taking lewd and lascivious liberties with five dependent boys; four of the alleged acts occurred off base. Among the bases for military jurisdiction over the off base offenses was the following: 1) he violated the personal security of families residing on an Air Force base; 2) he disgraced the public image of the Air Force and the CAP; and 3) the "military's interest in prosecuting the off base portion of the charged offenses far exceeds that of the civilian community wherein the offenses were committed. The analysis of subject matter jurisdiction in *Wierza* is taken from *Schleisenger* and *Trottier*. 11 MJ at 744. Because *Wierza* involved both on base and off base offenses, the court indicated that all similar offenses should be tried together. The *Wierza* case thus illustrates another emerging concept in military jurisdiction—"pendent jurisdiction." Although pendent jurisdiction is a civil concept, in a military case it stands for the proposition that there is a

"distinct military interest" in trying all "related" cases against a service member in one military forum. *Lockwood* alludes to "pendent jurisdiction" which does

"not in itself provide an adequate basis for depriving an accused servicemember of constitutional protection to which he would otherwise be entitled in a criminal trial. However, we recognized that some of the same conclusions which support "pendent jurisdiction" are relevant in determining if service connection exists. See *UMW v. Gibbs*, 383 US 715, 725 86 S.Ct. 1130, 1139; 16 L.Ed.2d 218 (1966).

Military courts have looked to "pendent jurisdiction" to support service connection for many years. In 1974 in *U.S. v. Rock* the Army Court of Review said:

"One implication arising from the combination of the three expressed opinions with regard to service connection in *Gosa* and the "forum appropriateness" holding of the plurality, is that if a serviceman is properly before a court-martial on charge alleging a clearly service connected offense, he might also be tried for a non-service connected offense." 40 CMR at 238 citing *Gosa v. Mayden*, 413 US 665 (1973).

See also *U.S. v. Lockwood*, 11 MJ 313 (AFCMR 1981) (Miller J. concerning and discussing "pendant jurisdiction").

In *U.S. v. Lampini*, 11 MJ 632 (AFCMR 1981) (a case not involving a sex offense) the court faced a situation where the prosecution presented alternative theories of criminal liability: one theory which had a definite service connection, the other alternative theory had little or no service connection. The accused was convicted of the alternative theory based on the simple theory that "proper administration of justice required that a single court decide the issues at a single trial." This interest in the administration of justice was the "distinctly military interest that could only be vindicated adequately at a court-martial . . . *Schlesinger v. Councilman*, 420 U.S. 733, 760, 95 S.Ct. 1300, 1314, 43 L.Ed.2d 591 (1975)" The conviction of the accused on the non-service-connected

alternative theory was upheld. The court also noted that the civilian court requested the military court to assume jurisdiction. 11 MJ at 634n.2.

The factors that facilitate the use of pendent jurisdiction in the instant case are:

(1) The military's interest in one judgment, one sentence, uncomplicated by the prosecution of a member by a state jurisdiction, thus complicating sentence service, rehabilitative efforts, and witness and defendant time away from useful military service.

(2) The Coast Guard has ordered victims and accused away from the state's jurisdiction for military purposes unrelated to the offenses, thus decreasing the interest and ability Alaska might have in prosecuting and, increasing the cost of the state's investigation and prosecution.

(3) The Coast Guard having transferred the victims and accused far from Alaska has an increased interest in disposing of charges arising in Alaska because it does not want to be seen as a haven for criminal behavior in the civilian community. A military member, knowing that he will be transferred away, will be less respecting of local law if he/she knows that his/her transfer will diminish the chances of state prosecution.

In summary, case law and the *Relford* factors clearly establish jurisdiction over the Alaskan offenses based on the following:

1. The threat to the military post. *U.S. v. Relford*, 401 U.S. 355 (1971) (factor 10, R.C.M. 203) Sexual offenses against Coast Guard dependents lowers morale and trust, depletes scarce medical and family support resources of the Coast Guard and poses a threat to other Coast Guard dependents at other commands upon the perpetrator's PCS or TAD moves.

2. Flouting of military authority. *U.S. v. Relford, supra*, (factor 9). In Alaska, the accused's victims were known to him to be Coast Guard dependents, daughters of his fellow yeomen in the office. This shows a disrespect for his superior and subordinate co-workers by committing attacks on co-workers' families that irretrievably damage working relationships and trust among service persons.

3. Connection between the accused's duties and the crime. *U.S. v. Relford, supra*, (factor 6, R.C.M. 203). The accused met with both victims at his office, in uniform. He retained extra dependent ID pictures of one victim in his wallet. The accused's status as a Coast Guard Petty Officer was a factor in the trust that was placed in him to coach in a children's bowling league and soccer league. One of the victim's fathers recruited the accused, a fellow yeoman, to coach in a children's bowling league. The accused was asked to coach in the children's soccer league because he played on the Coast Guard soccer team. It was through these coaching positions that the accused gained the trust of the victims that facilitated the sexual abuse. *See also Relford* consideration 5 (R.C.M. 203) (use of military status.)

4. The civilian courts are not available to prosecute this case. *U.S. v. Relford, supra* (factor 8, R.C.M. 203) The revelation of the offenses that took place on Governors Island led to an investigation of the accused's activities in Juneau, Alaska. Interviews with Jennifer Grantz and Amber Johnson led to the Alaskan charges. Both the victims of the Alaskan charges and the accused were transferred to the East Coast before the offenses were discovered. Alaskan authorities have not charged the accused, nor have they interviewed any of the victims. A representative from the State Attorney's Office in Juneau has indicated that the expense of investigating and prosecuting and the paramount Coast Guard interest in prosecuting child molestation charges arising out of two separate duty stations has led the state to defer to military jurisdiction. *See also* Additional Consideration 5, R.C.M. 203 (non-federal courts will have less than complete interest, concern, and capacity to vindicate military concerns).

5. Security of persons *U.S. v. Relford, supra* (Additional Consideration 1, R.C.M. 203) The mobility of military personnel on TAD or PCS orders not only makes it more difficult for states to prosecute, but the perpetrator of lawless conduct carries around with him the threat to the security of military personnel and their families. The off-base offenses in Alaska became a threat of on base offenses in Governors Island. In addition to the direct threat to the child-victims, there are

other victims to this type of offense—the military member and his spouse are attacked. Both the child victims and adult victims require counseling and treatment. The whole family, the military member included, undergoes something similar to a “rape trauma syndrome” that requires professional attention. One of the military members said of these offenses, “It would have been easier on both me and my family if *he* had assaulted *me*.” The effect of these offenses on the Coast Guard family and the military member is the same, whether the offense is on or off base. The Coast Guard has made a special effort to assist and nurture families in the Coast Guard on the basis that retention and productivity of the military member are increased. Criminal acts of sexual abuse victimizing Coast Guard dependents destroys the effectiveness of the Coast Guard’s family support programs.

6. Violation of base security. *U.S. v. Relford, supra* (Additional Consideration 3, R.C.M. 203) Where a Coast Guard member commits such offenses against the children of his fellow servicemen, the effects on morale, discipline, reputation, and integrity are keenly felt *on* the base itself. Every serviceperson’s reputation in the community is diminished.

“An offense which directly threatens the security of an installation may be service-connected even though it occurs off base. When an offense is committed near a military installation, the proximity may support a finding of service-connection as when it injures relationships between military and civilian communities and makes it more difficult to receive local support.” R.C.M. 203

7. Presence of factors such as geographical and military relationships *U.S. v. Relford, supra*. (Additional Consideration 6, R.C.M. 203) The fact that the civilian housing area near Juneau was a popular area for Coast Guard families may be properly considered. The Coast Guard subsidizes housing costs for military personnel in the Juneau area. The housing area was only 11 miles from the District Office in Juneau. The military relationships between the accused and both CWO Johnson and YN2 Grantz, all of whom were Yeomen, have been irretrievably damaged by the offenses.

8. Historically, a crime against one “associated” with the post created service-connection. *U.S. v. Relford, supra*, 401 U.S. at 369; R.C.M. 203; The dependents of military members are certainly “associated with the post.” Members received cost of living and housing allowances in Juneau based on the number of dependents; allowances for travel on PCS orders are given for dependents. Offenses against “camp followers” have always been within the jurisdiction of courts-martial. Winthrop, *Military Law and Precedents* 724, 725 (2nd Ed. 1920 reprint). The *Relford* factors themselves grew out of a case where the offenses were against the sister of a service member who was properly on base, and against the spouse of another service member. 41 U.S. at 367-69.

9. The inability to draw a line between on and off base offenses, duty and off-duty time. *U.S. v. Relford, supra* (Additional Consideration 9, R.C.M. 203). The accused built up a relationship with Jennifer Grantz and Amber Johnson over a period of time. How much of this relationship was facilitated by YN1 Solorio’s position in the Coast Guard is unknown. That some part of it was based on his position in the Coast Guard is certain. YN1 Solorio knew the two girls were Coast Guard dependents; they knew he was in the Coast Guard; they met him on occasion, at the office. YN1 Solorio coached the girls in the Youth Bowling league, a position he gained in part because YN2 Grantz knew him in the Coast Guard at the District Office. In addition, the criminal acts of a serviceman have an impact on the reputation of the service whether on or off base, on- or off-duty. The local Juneau papers report arrests and identify military members by branch of service. The effects of the offenses “on the reputation and morale of the Armed Services is an appropriate consideration in determining service-connection” R.C.M. 203 (Discussion)

10. Effects on reputation of the service, *U.S. v. Lockwood, supra*. Chief Judge Everett noted that some offenses may have an impact on recruitment and retention in a “nation which relies on an all-Volunteer Force.” When a Coast Guard member commits sex offenses against Coast Guard dependents, recruitment and retention are diminished. In a service where TAD and deployments often leave only one

spouse to attend to children, other service families are often relied upon and trusted to assist. The military members rely on community services, and symbiotically, the community services rely on military volunteers. Offenses such as child molestation, committed by a service member who coached community youth teams while victimizing Coast Guard dependents, tends to damage the reputation of the service and the morale of the service. The community may look with suspicion on Coast Guard volunteers for youth services. Coast Guard volunteers in youth activities may fear physical contact with children that is honest, well-motivated and necessary, because of the fears engendered by sexual offenses against children. In the context of off base drug offenses, *Trottier* noted "... it is difficult to predict where drugs will travel, -and into whose hands-[they will, fall]". Similarly in a small close knit service, the impacts of child sex abuse may be felt far away from the off base scene of the offense in Juneau. It may have impact on Governors Island after a transfer, or in a recruiter's office, or in a social worker's office in Washington where a tearful story of sex abuse is told or in a school in Virginia where a teacher is told of abusive events in Juneau. The effects of the crimes involving child molestation travel throughout the tight knit fabric of the Coast Guard family and the surrounding civilian communities.

11. The child victims and family-victims have been treated by military facilities. See *U.S. v. Shorts, supra*. These offenses breed psychological harm in many victims. The entire family usually is counseled for six to twelve months or longer. Long term treatment of the victims places demands on scarce military resources. The military member under treatment for psychological injury loses effectiveness and loses time from his duties.

12. *Pendant jurisdiction. U.S. v. Lockwood, supra; U.S. v. Wierza, supra, U.S. v. Lampini, supra, Gosa v. Mayden, supra*. The on base offenses on Governors Island and the off base offenses in Juneau are part of a common plan or scheme, and originate from a common intent. MRE 404. The impacts on reputation, morale and military effectiveness are identical

for on base and off base offenses. The military members who are witnesses, and the child victims who are witnesses should be spared the time and "trial trauma" of multiple trials. The accused should be spared the multiple exposure to punishment. The service has an interest in avoiding these costs because they represent lost resources. Multiple punishments by different sovereigns may be counter-productive, as when the military court seeks to rehabilitate an offender for future useful work, and the civilian court imprisons, thus blocking rehabilitative efforts of the service. The concept of "pendent" jurisdiction, combined with the obvious on base effects of the off base offenses, establishes a firm service connection.

13. There is a distinct military interest in prosecution of this offense that cannot be vindicated in civilian courts. R.C.M. 203. This distinct interest arises out of a combination of all of the factors mentioned above, although two deserve special mention. First, the Coast Guard has, through its PCS transfers, made it difficult for the State of Alaska to investigate and prosecute. The Coast Guard has removed much of the incentive to expend scarce state prosecutorial resources on a case where neither the victims nor the offender reside in the state. From this diminution of civilian interest arises a distinct and greater military interest - that the periodic PCS transfer not be an artificial barrier to justice. Second, the Coast Guard has placed a great emphasis on Family Advocacy and Family Programs in order to make military life more attractive and to increase the effectiveness of the military member. Offenses by a serviceman against Coast Guard children are in a real sense, offenses against the Coast Guard Family. The Coast Guard realizes that family support is necessary for good morale. When a criminal act by another serviceman tears the emotional fabric of the Coast Guard member's family apart, the service has also been made a victim.

"[The] issue turns in major part on gauging the impact of an offense on military discipline and effectiveness, on determining whether the military interest in deterring the offense is distinct from and greater than that of

civilian society, and on whether the distinct military interest can be vindicated adequately in civilian courts." *Schlesinger v. Councilman*, 428 U.S. 733, 760 (1975).

This Court-Martial has subject matter jurisdiction over all offenses charged.

/s/ FRANK E. COUER
LCDR, USCG
Trial Counsel

(Certificate of Service omitted in printing).

**BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER, THIRD COAST GUARD
DISTRICT, GOVERNORS ISLAND, NEW YORK**

(Title omitted in printing)

Stipulation of Facts for Jurisdictional Motion

It is hereby stipulated by and between trial counsel and defense counsel with the express consent of the accused without waiving the defense's right to object on evidentiary grounds, that the following facts are true:

1. Yeoman First Class Richard Solorio, while assigned to the staff, Commander, Seventeenth Coast Guard District, Juneau, Alaska lived at 8916 Birch Lane, Juneau, Alaska. The residence at 8916 Birch Lane is privately owned by YN1 and Mrs. Solorio and was purchased on 1 April 1981. They has rented the house and resided in it since 24 November 1980. YN1 Solorio and his family moved out of the house on or about 1 June 1984 when he departed PCS to New York. During the entire period in question, from 25 March 1983 to June 1983, Chief Warrant Officer Larry V. Johnson and his family lived next door to the Solorios in a private residence on Birch Lane. The neighborhood consisted entirely of private, single family residences. Aside from YN1 Solorio and CWO2 Johnson, YN1 Solorio knew of only one other Coast Guard member in the immediate neighborhood. The Senior Enlisted Adviser, Master Chief Boatswain's Mate Ron Haigh, lived on the same block as YN1 Solorio and CWO Johnson. He usually wore the uniform to and from work and he had a Coast Guard sticker on his car. He usually kept the car in the garage. During the period in question 25 March 1982 through 5 June 1984, Yeoman Second Class Frank Grantz lived in a privately owned trailer in a trailer park in Juneau, Alaska in a different neighborhood, approximately one half mile away. It took Jennifer Grantz 5-10 minutes to get from her trailer to YN1 Solorio's house by bicycle.

2. During the period of time the Solorio's lived in Juneau, YN1 Solorio was an E-6. His wife Toni Solorio was employed until October 1982 by the United States Forest Service. After leaving the Forest Service, Mrs. Solorio was self-employed as a licensed day care operator using the family

residence for this purpose. Her income producing ability was a significant factor considered by the lender, the First National Bank of Anchorage, in deciding to take a mortgage from the Solorio's. Mrs. Solorio's income was at all times sufficient to cover most or all of the monthly mortgage payments. A housing allowance of approximately \$700.00 per month was received by YN1 Solorio from the Coast Guard. There is no Coast Guard housing in Juneau except the Admiral's house. All personnel at the district office "live on the economy," renting or purchasing housing. All personnel received a housing allowance.

3. CWO Larry Johnson was a YN1 when he started his tour at the Seventeenth Coast Guard District (eee) in August 1978. YN1 Solorio moved next door to the Johnsons in November 1980. YN1 Solorio worked in (osr) and went to military personnel (pp) after CWO Johnson left that office. CWO Johnson as a YN1 worked in (eee), (pp), then (ps). He was promoted to YNC in (ps) while YN1 Solorio was in military personnel (pp). CWO Johnson moved from Juneau in June 1983. YN2 Grantz worked in (eee) during his entire tour from 11 July 1980 to 29 June 1984 with the exception of only one week when he worked in (pp).

4. YN1 Solorio became acquainted with Amber Johnson after Amber, and Brian and Manual Solorio had become friends. Amber would spend time at the Solorio's home and Brian and Manual would also play at the Johnson residence. CWO2 Johnson and YN1 Solorio became friends as a result of their being next door neighbors, and as a result of their children's friendship. Also, the Solorio's would socialize with the Johnson's in their homes. Amber played on the City Youth Soccer League, coached by YN1 Solorio. Because the Johnsons lived next door, Amber would get a ride to and from soccer with YN1 Solorio if Jo Ann Johnson wasn't coming to the game. Mrs. Johnson also ran a day care center in her home. YN1 Solorio and CWO Johnson drove to work together on various occasions. One of the reasons was so that one of their cars would be available to their spouses in case of an emergency. YN1 Solorio usually traveled to work by bus.

5. YN2 Frank Grantz and YN1 Solorio became friends as a result of their association with a Juneau Men's city basketball league. They knew each other from the district office. They also were associated with each other as President (Grantz) and Treasurer (Solorio) of a youth bowling league in Juneau in which their children participated. YN2 Grantz asked YN1 Solorio to assist in the youth bowling league because he knew YN1 Solorio's children were involved in the league, and knew Solorio to be interested in bowling. YN1 Solorio became acquainted with Jennifer Grantz as a result of his friendship with YN2 Grantz and as a result of Jennifer's friendship with YN1 Solorio's two sons. Jennifer also competed on a youth bowling league team, and played on the Juneau Parks and Recreation league soccer team coached by YN1 Solorio. YN1 Solorio asked YN2 Grantz to coach the soccer team on occasions when YN1 Solorio was absent. Neither league was sponsored by the Coast Guard. The youth soccer league was sponsored by the city and the youth bowling league by a private association with both civilians and Coast Guard dependents participating. Adult leaders were both Coast Guard and civilian parents of the participants.

7. Jennifer Ann Grantz was born on 23 October 1971 and is the daughter of YN2 Frank Grantz, USCG and his wife Cathy Lynn Grantz. She is not, and has never been, married to the accused or to anyone else. YN2 Frank Grantz is now assigned to Commander Coast Guard Group Baltimore, MD.

8. Amber Lee Johnson was born on 12 March 1972 and is the daughter of CWO Larry Johnson and his wife Joann Johnson. Amber was in 3rd grade in the fall of 1980 when the Solorios moved in. She is not, and has never been, married to the accused or to anyone else. CWO Larry Johnson is now assigned to Commandant (G-OIS).

9. The Grantz family is undergoing counselling in the Anne Arundel Country Crisis Center in Maryland (a state-funded activity) to assist them in dealing with this situation. YN2 Grantz has expended personal funds for physical examination and medical treatment of Jennifer.

10. Amber Johnson has received counseling from a social worker employed by Northern Virginia Social Services (a state-funded activity). The expense for this counseling has

been borne by CWO Johnson. CWO Johnson has contacted Brenda Watson, a social worker employed by USCG Headquarters, to assist him on two occasions in coping with this situation. CWO and Mrs. Johnson are also undergoing counseling with private counselors.

11. The Solorios residence on Birch Lane was approximately 11 miles from the District office in Juneau.

12. At all times pertinent to the charges YN1 Solorio was on active duty in the U.S. Coast Guard.

13. From 12 October 1980 to 5 June 1984 YN1 Solorio was assigned to the Seventeenth Coast Guard District in Juneau, Alaska.

14. YN1 Solorio is presently on active duty in the U.S. Coast Guard, assigned to Commander, Coast Guard Group New York, Governors Island, New York.

15. All personnel and pay data information on the charge sheet is correct.

16. Coast Guard Support Center New York, Governors Island, New York is an area under the exclusive jurisdiction of the Federal Government.

/s/ RICHARD SOLORIO

YN1, USCG
Defendant

/s/ ANDREW M. HOCHBERG

Andrew M. Hochberg
Lt. USCGR
Detailed Defense Counsel

/s/ FRANK E. COUPER

Frank E. Couper
LCDR, USCG
Trial Counsel

BEFORE A GENERAL COURT-MARTIAL COVENED BY
THE COMMANDER, THIRD COAST GUARD DISTRICT,
GOVERNORS ISLAND, NEW YORK

(Title omitted in printing)

Stipulation of Expected Testimony of Jennifer Grantz

It is hereby stipulated, by and between trial and defense counsel with the express consent of the accused, and without waiving the defense's right to object to any portion of this document on any evidentiary grounds, that if Jennifer Ann Grantz were present in court, testifying under oath, concerning whether there is court-martial jurisdiction, she would testify substantially as follows:

I am 13 years old. My date of birth is 23 October 1971. I live at 7862 Americana Circle, #101, Glen Burnie, Maryland 21061. I am in seventh grade at Marley Jr. High. I have no brothers or sisters. My father's name is Frank Grantz and he is a Yeoman in the Coast Guard. My mother is Cathy Grantz. I was going into third grade when we went to Alaska in 1980. I just finished sixth grade when we left. I like to play soccer and bowl. I know Mr. Solorio through my friendship with Brian Solorio and through bowling. He was an instructor in bowling. Mr. Solorio was my soccer coach for the two years I played in Alaska. After soccer, Mr. Solorio would sometimes give us a ride home if my dad wasn't there. My father would usually take me home from bowling. During 1980-81 when I went to Capital School in Juneau. I saw Mr. Solorio once or twice a week at work because after school I went to the district office every day. I would wait there until my father finished work and he would take me home. I would say hi or maybe talk a little about bowling or school. I talked to other people in the office too. After I started school in Mendennall Valley I had other friends who were children of civilians, sometimes I would play at their house and sometimes they would play at mine. I didn't stop by the district office so much. I would only go by the office for ID cards, dental appointments, and things like that. I visited Mr. Solorio at times when I was there but I can't recall if I visited him when I went for ID cards, dental appointments and things like that. I saw

Mr. Solorio in uniform in the office, and a few times at home when he came home from work while I was playing with Brian.

I would go over to play at the Solorio's house one to three times a week while I was in Juneau. Depending on the time I went over there to play, sometimes Mr. Solorio was there, and sometimes he wasn't. Mostly I played with Brian, but when Mr. Solorio was there, sometimes he'd play with us. He taught me some video games.

I knew that he was in the Coast Guard, and that my dad knew him in the Coast Guard. I think that he worked in a different office than my Dad.

/s/ RICHARD SOLORIO

YN1, USCG

Defendant

/s/ ANDREW M. HOCHBERG

Andrew M. Hochberg

Lt. USCGR

Detailed Defense Counsel

/s/ FRANK E. COUPER

Frank E. Couper

LCDR, USCG

Trial Counsel

BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER, THIRD COAST GUARD
DISTRICT, GOVERNORS ISLAND, NEW YORK

(Title omitted in printing)

Stipulation of Expected Testimony of Amber Johnson

It is hereby stipulated, by and between trial and defense counsel with the express consent of the accused, and without waiving the defense's right to object to any portion of this document on any evidentiary grounds, that if Amber Lee Johnson were present in court, testifying under oath concerning whether there is court-martial jurisdiction, she would testify substantially as follows:

I am 13 years old. I was born on 12 March 1972. I live in Dale City, Virginia at 4711 Lehigh Court. I am in the sixth grade. Larry V. Johnson and Jo Ann K. Johnson are my parents. My dad is in the Coast Guard in DC at Buzzard's Point. I left Alaska in June of 1983. I had just finished fifth grade. I repeated fifth grade during the one year our family was in Oklahoma before we moved to Virginia. I am now in the sixth grade.

From about 1980 until I left Alaska in June 1983, Mr. Solorio lived next to me. Mr. Solorio worked in the same building as my dad, but I don't think they worked in the same office. I saw Mr. Solorio in uniform both at home and at work. He coached my soccer team for one year when we won the championship in 1982. He was an instructor and kind of an administrator in the city bowling league that I was in. The bowling league and the soccer league were not Coast Guard sponsored. Jennifer Grantz and I were on different bowling teams, but were on the same soccer team. My dad helped with the bowling league and the soccer team on a few occasions, but not regularly. I went over to Solorio's home almost every day or every other day during the week. Sometimes I went over right after school, sometimes later. Depending on when I went over Mr. Solorio was there sometimes. I got home from school before he would get home from work. Sometimes Mr. Solorio would take me home from bowling or soccer and I'd stay at the Solorio's and play with Brian Solorio. Mr. Solorio taught me how to play a computer chess game. I had

other friends who were children of civilians. I would play at their houses sometimes and sometimes they would play at my house.

I usually went over to the Solorio's to play with Brian or to watch the Solorio's cable TV. When Mr. Solorio was there, sometimes he would play too. I became friends with Mr. Solorio after I became friends with Brian. My mom was good friends with Mrs. Solorio—they had garage sales together and both of them had day care centers in the home. My dad and Mr. Solorio were good friends too. I don't know if my father became friends with Mr. Solorio first, or if I became friends with Brian first.

One time I saw Mr. Solorio at his office to get ID cards. He took my ID card picture twice. Each time he snapped the shutter, the camera developed two pictures. The last time he took my ID picture he asked which one I wanted on my ID card. The other time he took my ID card picture he just took the best picture without asking me. When he took the ID pictures a total of four were taken. Before I left Alaska he showed me pictures of me in his wallet. One picture was in black and white, one or two were in color. The black and white picture looked just like the picture taken for the ID card taken of me by YN1 Solorio when I wore pigtails. He never told me the picture was an ID card picture and I didn't ask, but I believe that it was one of the pictures taken at the same time the ID card picture was taken. I looked at the pictures for just a few moments. Mrs. Solorio had taken a number of pictures of my at my house and at hers during the time we lived next to each other. Some of those pictures were taken when I wore pigtails. YN1 Solorio said he kept them to remember me since I was going away. Other than that, he did not say why he had the pictures in his wallet. I think that this was about a month before I left Alaska.

I am in weekly counseling at Northern Virginia Family Services with Dianne Marshall, a social worker who is not a

federal government employee. I would be just as upset and would need counselling if someone not in the Coast Guard had done this to me.

/s/ RICHARD SOLORIO
YN1, USCG
Defendant

/s/ ANDREW M. HOCHBERG
Andrew M. Hochberg
Lt. USCGR
Detailed Defense Counsel

/s/ FRANK E. COUPER
Frank E. Couper
LCDR, USCG
Trial Counsel

BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER, THIRD COAST GUARD
DISTRICT, GOVERNORS ISLAND, NEW YORK

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

COMDTINST 1750.3

8 April 1983

COMMANDANT INSTRUCTION 1750.3

Subj: Family Advocacy Program

1. *PURPOSE.* This Instruction establishes a Coast Guard Family Advocacy Program.

2. *APPLICABILITY.* This Instruction applies to all Coast Guard members, active and retired, and to their family members to the extent feasible. It will apply to members of other Uniformed Services and their dependents to the extent necessary for reporting and treatment. In the absence of agreements to the contrary, responsibility for members and their dependents remains with the parent Service.

3. *DISCUSSION.*

a. The stress military life imposes on families has become recognized as a significant factor in members' performance, and in the morale and efficiency of Coast Guard units. In some families, reaction to stress may take the form of illness, missed work time, poor performance, alcohol or drug abuse, or child and spouse abuse or neglect. When a family reacts to stress in such a manner, decisive command action must be taken.

b. In 1970 the General Accounting Office (GAO) recommended that military service establish family advocacy programs. In 1981 the Department of Defense (DOD) in concert with the Coast Guard, published a joint services directive tasking with service with establishing a Family Advocacy Program tailored to their own needs.

c. The Coast Guard Family Advocacy Program is designed:

- (1) To establish a policy and provide the information necessary for dealing with family violence, abuse, and neglect.

- (2) To provide guidance to commands in the development and identification of family resources to assist all families. These resources could include parenting education through local agencies, counseling, and resettlement assistance, to name a few.
- (3) To educate the Coast Guard community in recognizing the importance of the family's role in mission accomplishment.

4. *POLICY AND PROCEDURE.*

a. Spouse and child abuse or neglect detracts from the efficiency of Coast Guard units, impairs the reputation and prestige of the Coast Guard in the civilian community, and is incompatible with the high standards of professional and personal conduct required of Coast Guard members.

b. To reduce the negative effects of family abuse or neglect, the Coast Guard's policy is to prevent such abuse or neglect through education, through discipline of criminal acts when appropriate, and through rehabilitation of military personnel who have the potential for future useful military service without further abusive incidents.

c. When cases of abuse or neglect involving persons subject to this instruction come to the attention of commanding officers or officers in charge, commands will take actions using the following guidelines:

- (1) Protect and treat the victim as prescribed in the Family Programs Handbook;
- (2) Treat the abuser at the appropriate facilities, as defined below, to the extent the individual's motivation and the nature of his or her problems permit;
- (3) Preserve the family unit to the extent that is in the best interest of the family as determined by those professionals providing treatment and by the family's wishes; and
- (4) Initiate administrative or disciplinary actions which should, in the judgment of the commanding officer, result from the incident. The seriousness and the type of injury to the victim, as well as the extent to which treatment of the abuser is likely to prevent repetition, should be factors in this decision.

d. Reports will be submitted to local authorities as required by law. Such reports may lead to civil investigations and court actions. These actions should be considered separate from military procedures initiated by commands.

e. The diagnosis of child or spouse abuse requires specialized professional screening and treatment. The Coast Guard's policy is to identify and utilize Uniformed Services Medical Treatment Facilities (USMTF) Family Advocacy Programs for screening, treatment and referral. When there is no USMTF in close proximity to a Coast Guard command, local or state facilities providing services to abused families are to be used.

f. Exclusive Federal jurisdiction will be relinquished subject to military needs, to the extent necessary, to ensure that state laws on child and spouse protection apply on Coast Guard installations. Commanding officers and officers in charge are urged to work closely with military, state, and local judicial systems to define geographic areas of jurisdiction (exclusive, concurrent, partial, or proprietary) to ensure interagency support and cooperation.

g. Certain forms of abuse or neglect are criminal acts. The Family Advocacy Program is in no way intended to replace or impede the appropriate use of the Military Justice System, investigations convened under the UCMJ, or the use of Coast Guard investigators as deemed necessary by the commanding officer. Due to the sensitivity and delicate nature of interviewing persons subjected to these types of criminal acts, especially child victims, adequate training of investigators is mandatory.

h. Commanding officers and officers in charge should ensure that a full, discreet inquiry is conducted into each case of suspected abuse or neglect. Members conducting inquiries should be aware that complex, volatile emotions are involved in such cases, including those of the investigator. An accusation can place professional standing, social acceptance and career progression at risk. Therefore, accusations and classifications of individuals short of judicial conviction, or administrative determinations incident to separation from military service, shall be protected with the highest degree of

confidentiality. Disclosure of information regarding incidents of family violence should be to only those individuals who have an absolute need to know, and must be made only in accordance with the Privacy and Freedom of Information Acts Manual (COMDTINST 5260.2).

i. District commanders shall identify units which will provide family advocacy support to commands throughout the district, including the district staff. These units shall designate a Family Advocacy Representative selected on the basis of criteria contained in enclosure (2). Commanding officers of units with Family Advocacy Representatives may form Family Advocacy Committees. Family Advocacy Representatives will determine which state, local, or military facilities will be utilized by the commands he or she serves, among other functions listed in enclosure (2). The commanding officer of each Headquarters units will also designate a Family Advocacy Representative. District Commanders shall designate a member of their staff to coordinate the Family Advocacy Program district-wide.

j. Commandant (G-P) and (G-K) will jointly manage the Family Advocacy Program through a Central Family Advocacy Committee composed of personnel appointed from each office. The size of the committee will be determined by program demands. The Committee shall meet as necessary and not less than quarterly to review documentation on

(The remainder of this Commandant Instruction was not entered into the record)

BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER, THIRD COAST GUARD
DISTRICT, GOVERNORS ISLAND, NEW YORK

(Title omitted in printing)

Request for Judicial Notice

Pursuant to MRE 201 the Government requests that judicial notice be taken of the following policies of the United States Coast Guard contained in the Coast Guard Personnel Manual COMDTINST M1000.6:

- a. Chapter 4-A-12 Unrestricted assignment
- b. Chapter 4-E-26 Humanitarian Transfer

The government requests that judicial notice be taken of the geographic relationships of the communities in the Juneau area, and the approximate population of Juneau, the geographical and topographical boundaries of Juneau, the street map of the Mendenhall Valley and Glacier Park housing areas. (See attached map.)

/s/ FRANK E. COUPER

Frank E. Couper
LCDR, USCG
Trial Counsel

(Certificate of Service omitted in printing).

Coast Guard Personnel Manual, COMDTINST M 1000.6

4-A-12 AVAILABILITY OF PERSONNEL FOR UNRESTRICTED ASSIGNMENT

A. There is a growing trend in society toward families headed by a single parent. It is no longer automatic that children remain in the custody of their mother following divorce or separation, and many single fathers are raising their children unaided. It is also becoming commonplace for an unmarried woman to be raising children.

b. Caring for children without the aid of a spouse is a difficult and demanding task for a civilian parent because of the press of duty, it can be even more difficult for a military parent. It has always been an integral feature of military service that a member is on call 24 hours a day and subject to transfer on a worldwide basis. Unusual and irregular working hours are a regular part of many Coast Guard assignments. These features sometimes create difficulties for both the member and the Coast Guard when the member is a single parent of young children.

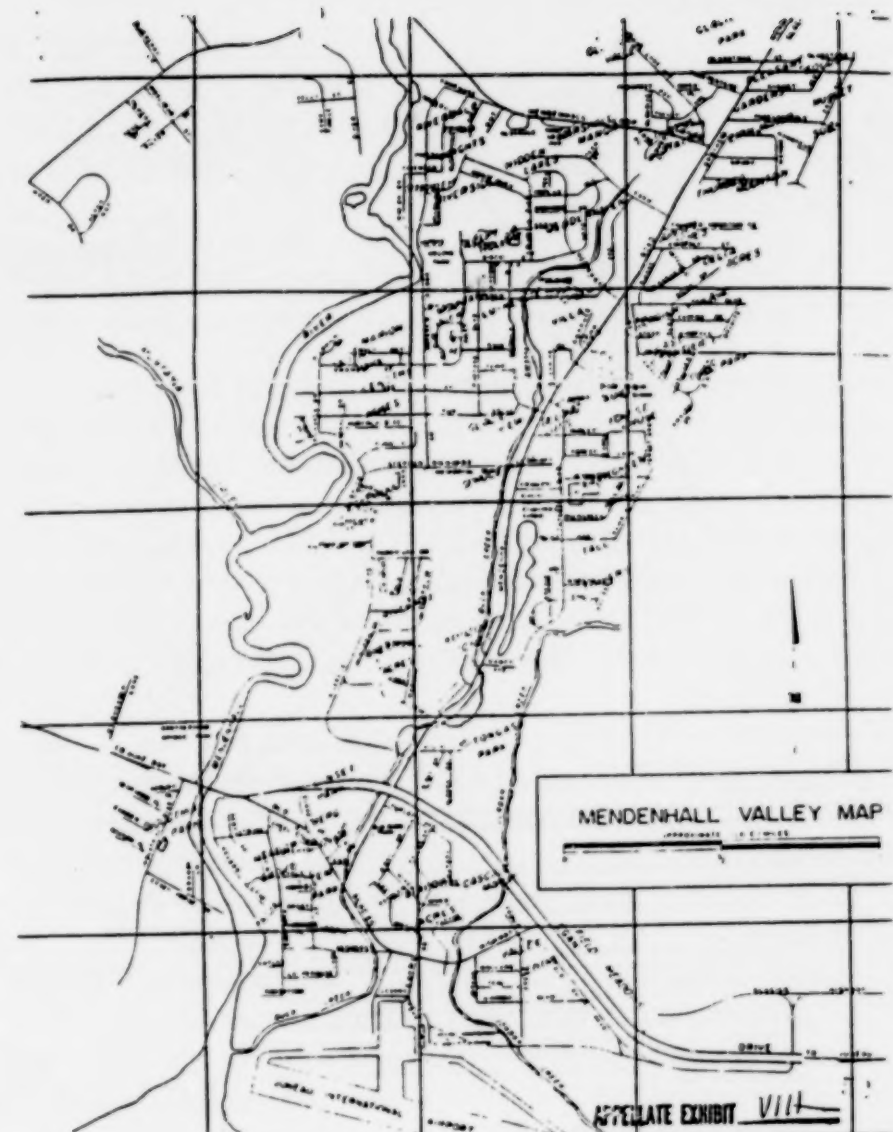
c. It is the Commandant's policy that all members of the Coast Guard be available for unrestricted duty assignment. It is manifestly unfair and impractical to grant exceptions to this policy to certain members. Where for any reason a member is not available for unrestricted assignment for an appreciable period, the best solution is usually separation from the Service. Where there is an indication that the problem can be resolved, the Commandant will grant a reasonable time (4 months) for the member to solve his or her problem and once again become available for full duty.

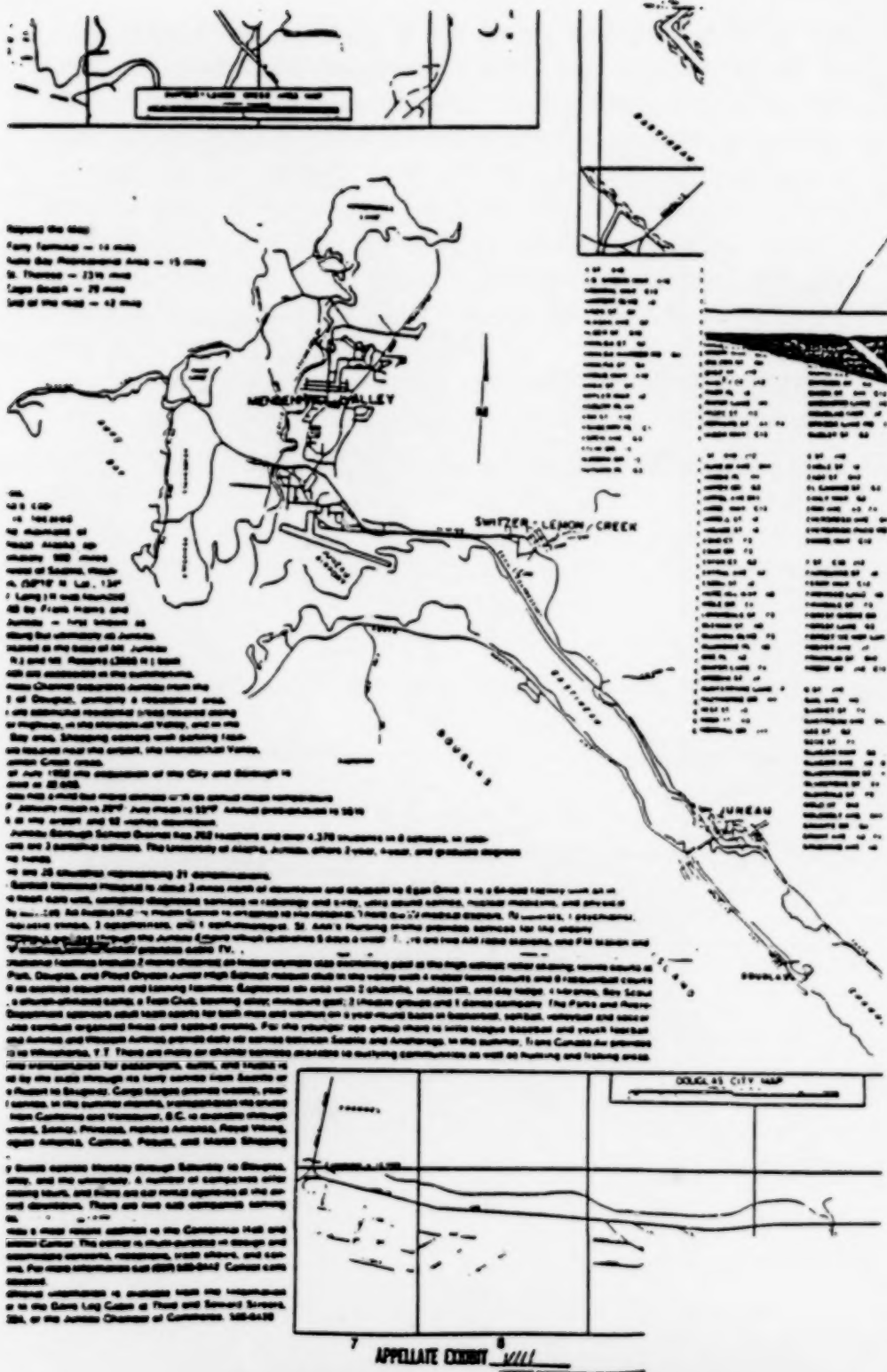
d. Commanding officers and officers in charge are expected to show sympathy and compassion for the problems of their personnel. They shall not, however, accept less than unrestricted availability for regular duties and watches.

e. Single parents who request exception from normal job requirements shall be counseled that arrangement for the care of their children is the responsibility of the parent and that the Coast Guard had the right to expect that their status as single parents will not interfere with the full performance of their duties.

f. Where the member is not fully available for duty, the problem cannot be resolved locally, and it appears to be relatively short-term in nature, the member should be advised to submit a request for humanitarian assignment, documented in accordance with article 4-C-26. If granted a humanitarian assignment, the member will not be permitted to reenlist until the documentation required by article 4-C-26 that "the hardship situation is completely resolved and the member is available for unlimited assignment in accordance with Service needs," is submitted.

g. Where there is no clear prospect for unrestricted availability in the near future, the commanding officer should recommend that the member be separated in accordance with article 12-B-13.





BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER, THIRD COAST GUARD
DISTRICT, GOVERNORS ISLAND, NEW YORK

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TO ALLCOGARDSEVENTEEN
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UNNUMBERED ALLCOGARDSEVENTEEN
SUBJ: Good order and discipline

1. Provided below are the results of recent court-martials held in the district and recent prosecutions by the State of Alaska of Coast Guard personnel.

A. A FN was convicted by a special court-martial of violating article 112A UCMJ. The offenses involved two specifications of distribution of cocaine and one of use of cocaine. The sentence awarded was reduction to E-1, two-months confinement, and forfeiture of 410 dols per month for two months.

B. A SN was also convicted by a special court-martial of an offense involving a controlled substance. Specifically, he used cocaine in the presence of the duty MAA. The sentence awarded was reduction to E-1, four months confinement, and forfeitures of 413 dols per month for four months.

C. A YN2 and a SA have been tried and convicted in the Alaska State courts on the charge of sexual abuse of a minor in the second degree (in this case, rape). This is a felony offense. The SA was sentenced to five years imprisonment with four years suspended. Sentencing for YN2 still pends.

D. A BM1 has been convicted by the Alaska State courts on 3 counts of sexual abuse of a minor in the second degree. These offenses involved his own children. He was sentenced to imprisonment for three consecutive 10 years terms, resulting in a total sentence of 30 years.

2. These results should be made known to all hands. The court-martials are indicative of the district commander's intention to prosecute (and not merely administratively discharge) members engaged in the distribution of illegal drugs or their use under aggravating circumstances.

3. The state prosecutions should serve to remind all military personnel of the fact that the state of Alaska's criminal jurisdiction includes all military bases in Alaska, Coast Guard members are not immune from prosecution by the state due to their military status or because they may live and work on a Coast Guard installation. Offenses involving civilian victims, including dependents, may well end up in state court even if the accused is a member of the Coast Guard and the offense occurred on Coast Guard property.

4. It is apparent that the sentence in the state courts can be substantial. Moreover, these proceedings should impress upon our people the fact that the Coast Guard and society in general, intends to hold an individual fully accountable for any criminal acts he or she may commit. In the recent past, criminal abuse of minors and family members was often not reported and even less frequently prosecuted. This is no longer true. Individuals found to be engaged in such conduct will be prosecuted to the fullest extent possible.

BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER, THIRD COAST GUARD
DISTRICT, GOVERNORS ISLAND, NEW YORK

(Title omitted in printing)

Stipulation of Expected Testimony of Louis Menendez

It is hereby stipulated by and between trial counsel and defense counsel with the express consent of the accused without waiving the defense's right to object on evidentiary grounds, that the following facts are true:

1. My name is Louis James Menendez, Esq. I am an Assistant District Attorney for the First Judicial District, Criminal Division, Department of Law, Alaska. I was responsible for the decision to defer prosecution of YN1 Richard Solorio to the legal prosecutorial arm of the Coast Guard.

2. Should the Coast Guard determine, however, that the court-martial is without jurisdiction to prosecute this case, the District Attorney's office would reconsider its decision not to prosecute. There is no present statute of limitations problem with regard to this case.

/s/ RICHARD SOLORIO

YN1, USCG
Defendant

/s/ ANDREW M. HOCHBERG

Andrew M. Hochberg
Lt. USCGR
Detailed Defense Counsel

/s/ FRANK E. COUPER

Frank E. Couper
LCDR, USCG
Trial Counsel

BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE - COMMANDER, THIRD COAST GUARD
DISTRICT, GOVERNORS ISLAND, NEW YORK

Transcript of Proceedings on Motion to Dismiss

[10] DC: Your honor, the defense has several motions. The first motion the defense will begin with is the motion to dismiss Charge I Specification 11 through 15, Charge II, Additional Charge I, Additional Charge II, Specifications 1 and 2, and Additional Charge III as not being within the subject matter jurisdiction of this court-martial and should be dismissed.

MJ: You have the original or does the reporter have the original of your motion papers for marking as Appellate Exhibit on this motion?

DC: Not at this time sir.

MJ: Lets deal with your motion papers and the government's response so that they can be Appellate Exhibits in order.

[The reporter was provided with the defense's motion to dismiss and the government's response. The motion to dismiss and its attached memorandum of law was marked as Appellate Exhibit II and the government's response was marked as Appellate Exhibit III.]

MJ: Do you have anything further now on the motion?

DC: I choose to argue the motion after evidence has been presented sir. The basic gist of the motion is that offenses took place off base involving civilian dependents, there was no military property involved, no security of the base involved, the integrity, security, morale, reputation of the Coast Guard is only remote. The 12 *Relford* factors are not in consideration - the *Relford* considerations have not been met and cannot be met.

TC: Your honor, the government opposes the motion. The government has a stipulation of fact for purposes of this jurisdictional motion and also two stipulations of expected testimony; one for Jennifer Ann Grantz and the second for Amber Lee Johnson. I ask that these documents be marked as Appellate Exhibits IV, V and VI.

[11] [The reporter was provided with the government's three stipulations. The stipulation of fact was marked as Appellate Exhibit IV, and the stipulations of expected testimony of Jennifer Grantz and Amber Johnson were marked as Appellate Exhibits V and VI respectively.]

DC: Your honor, just a point, I just realized I do not have my copy of the stipulation of fact with me and I ask that we break so that I may make a copy.

MJ: Well, I will want to go over with the accused these stipulations at least his understanding of them, I think that would be appropriate that you have a copy before you when I do that.

DC: Let me just check one other place. I am sorry for the delay your honor, I do have a copy.

MJ: So you are ready to proceed?

DC: I am ready.

TC: Your honor, the government also has two request for judicial notice; the first requesting that judicial notice be taken of Commandant Instruction 1750.3 the Family Advocacy Program and Commandant Instruction Pamphlet 1750.4, certain pages and the second request for judicial notice, I request judicial notice be taken of Chapter 4-A-12, unrestricted assignment and Chapter 4-C-26, humanitarian transfer of the Coast Guard Personnel Manual.

DC: Your honor, the defense would object to you taking judicial notice the both aforementioned items. The prosecution apparently would seek to have you judicially notice these items to demonstrate that there has been an effect on the morale, discipline, security of an individual base to show that it also effected military readiness. Those matters are properly received in evidence and should not be establish by Coast Guard or military policy. Whether or not an individual is prepared to go on restricted transfer is a question for the member and should be properly placed before the member. Whether there are Family Advocacy Programs available or Coast Guard personnel available to assist with particular family problems is not an issue properly before the court. If Coast Guard personnel have been involved, then that is also a proper matter for testimony and should not be judicially

noted. Those matters are relevant and policy should not be a standard of which we measure service connection in these offenses. The facts and circumstances of the specific offenses should be determined. As many of the cases from *O'Callaghan* on have mentioned analysis that a case by case offense by offense [12] analysis. Policy should not be the standard by which we measure that case by case analysis.

MJ: Let me back up a minute before we get too far ahead of ourselves and have things pending. Before I deal with the judicial notice let go back to the stipulations were we started here. Petty Officer Solorio—first of all, let me clarify from the government, these stipulations are offered only for purposes of the motion before the court.

TC: That is correct your honor.

MJ: That's the defense's understanding as well?

DC: Yes your honor.

MJ: I've been presented with Appellate Exhibits IV through VI titled Stipulation of Fact and two Stipulations of Expected Testimony. I do see your—

DC: Before we proceed with that, the defense also has a stipulation of expected testimony it would like to present. Would you like the defense to wait until we resolve this issue or go forward with all four stipulations?

MJ: Lets bring in the defense's evidence at the appropriate time and I can make reference back to these instructions if need be. I see on each of the stipulations I have before me your signature. Do you understand what is contained in the stipulations?

ACCUSED: Yes your honor.

MJ: Do you understand how the stipulations are being used?

ACCUSED: Yes your honor, as testimony and as fact.

MJ: Do you further understand that even at this point before I agree to except these stipulations you may withdraw from them?

ACCUSED: Yes your honor.

MJ: So even though you have signed it you may withdraw from testimony or ask to withdraw from the stipulation and if you have a good reason for that I'll allow it. You shouldn't

enter into a stipulation unless you are satisfied that it is in your own best interest to do so. Do you understand that?

ACCUSED: Yes your honor.

[13] MJ: So with respect to the stipulations of expected testimony you do agree that those witnesses named, if present in court, that is what they would say and that you want to enter into this and want me to consider this testimony in that form as well.

ACCUSED: Yes your honor.

MJ: The three offered stipulations four, five and six are accepted. Are these copies available?

TC: Yes your honor, I believe I put copies on the bench earlier. May I approach the bench your honor?

MJ: You may.

MJ: Copies have been found, thank you. Now, turning to the judicial notice matters, did the government want to be further heard in view of the defense objection?

TC: Your honor, with respect to the judicial notice of Coast Guard Personnel Manual provisions, those provisions although they are matters of policy they are also facts that the Coast Guard does have those policies. Particular application of the *Relford* factors to each individual case always relies on a policy whether the policy is judicial or a policy is determined by regulation or the law. These Coast Guard policies are in effect the law of the Coast Guard. Should there be testimony in this individual case that for some reason the availability for transfer of the military members affected is restricted and these members cannot be assigned world wide that would obviously have an impact on the Coast Guard whether or not we had this policy. However, the existence of the policy adds to the distinct military interest and that is one of the factors your honor has to take into consideration. It would be an impact with or without the policy but the factual existence of the policy makes that military interest more distinct. With respect to the judicial notice of the Family Advocacy instructions I believe would be a matter of facts that they be judicially noticed without the instructions that Coast Guard families could either be supportive or nonsupportive of a member, and that in essence is what that instruction—the

policy in that instruction. If the testimony in this individual case is that acts of the accused were destructive to the family and that created an injury in fact to a military member, the moral of the service, once again that impact would [14] be one the *Relford* factors without the policy contained in Commandant Note 1750. But with Commandant Note 1750, the military interest becomes more distinct and is more precise. That is all I have your honor.

MJ: You just said Commandant Note, you mean the Commandant Instruction?

TC: Excuse me, Commandant Instruction 1750 and the pamphlet instruction.

MJ: As part of the pretrial papers provided to me, there was an additional matter on the second request for judicial notice on a – referring to the geographic relationships of the communities in the Juneau area, approximate populations and an attachment of a couple of maps. Those have not now been offered, what is your intent there?

TC: Yes, your honor, I would ask that you take judicial notice of the geographic relationships in the Juneau area for purposes of this motion only and I would ask defense counsel if he objects to that portion of it. Once again, that is just for purposes of the motion.

DC: I believe that in either case the geographical relationships can be offered as a Prosecution Exhibit and might be best in that record that way. If the prosecution does have members who can lay a foundation for those maps, the defense would not object – would stipulate to the admissibility of them as Prosecution Exhibits.

MJ: Well. Prosecution Exhibits would be on the merits, I want to deal with the motion offerings right now. If they are offered they are offered as Appellate Exhibits and then we will separately offer them, at the appropriate time, if they are to become Prosecution Exhibits on the merits. So, even at the expense of a larger record we are not confusing ourselves or the members.

DC: I would have no objection to taking judicial notice of the maps.

MJ: Have the originals of those request for judicial notice been provided to the reporter?

TC: No your honor, I have them.

MJ: They should be marked as Appellate Exhibits in order.

[The reporter was provided the government's requests for judicial notice and marked them as Appellate Exhibits VII and VIII.]

[15] MJ: You have no written objection?

DC: No your honor, I do not. Your honor, there are two request for judicial notice, which one will be the first?

MJ: The first will be the two Commandant Instructions was the order presented followed by the two excerpts from the Personnel Manual. Included with the Personnel Manual excerpts were the maps.

DC: Thank you sir.

MJ: I certainly hear and understand defense counsel's argument on the relevance of this matter, nevertheless I am going to overrule your objection and for purposes of the motion only, take note of the requested instructions and Personnel Manual statements in the sense that this motion deals with service connection and the matters that may be of significance there in the *O'Callaghan* decision cited may be brought wide range. At the same time how these policies become relevant or are applied for purposes of this motion I am not deciding in this, but I will consider and take judicial notice of these matters and take into account in deciding the motion. I will also accept the maps which were not objected to and the representations contained thereon as of the dates included thereon which may or may not be entirely relevant, certainly geographic relationships, places don't change, populations do, streets grow, Juneau has been a boom town, I knew that from being there. What I also would take judicial notice of I guess – no I am not going to take judicial notice of that, but what my concern is that if we get to using these on the merits nail down a particular date or whatever as to when these are effective for. A map is a representation of a place at a particular time and I will take as the time represented here on the maps which is sometime in 1982.

DC: Your honor, do you have the original of the maps or copies?

MJ: I have a copy. The original is here, I will inspect it. The original appears to be a copy. My concern between what I have been provided as a pretrial and what has been marked as Appellate Exhibit VIII is that there was an individual street map of the Mendenhall Valley that is not appended to the Appellate Exhibit VIII, should it be?

TC: Yes your honor it should be.

MJ: In addition to an overall area map which contains a good bit of verbal description which is appended to Appellate Exhibit VIII, I had received a page entitled Mendenhall Valley map.

[16] TC: If I might substitute this copy for the copy in the record your honor, this one does have the Mendenhall Valley map in it.

All we need is that last map which the reporter can take care of putting together.

[The reporter was provided the Mendenhall Valley map and appended it Appellate Exhibit VIII.]

MJ: You had no objections that it include both maps?

DC: No sir.

MJ: It did not.

DC: I have no objections to including both maps.

MJ: All right. Your may proceed trial counsel.

TC: Your honor, the final documentary matter is a letter from the Alaska Attorney General and deferring the Coast Guard's prosecution of this case with respect to the Alaskan offenses and a unnumbered ALLOGARDSEVENTEEN date time group 160803Z May 85 and I would ask that these be marked as Appellate Exhibits IX and X. Copies have been provided.

[The reporter was provided with the letter from Alaska and the ALLOGARD message and marked the them as Appellate Exhibits IX and X respectively.]

DC: Your honor, the defense objects to the receipt into evidence of Appellate Exhibit IX, the letter from Alaska, as being hearsay not within any hearsay exception. Whether or not Alaska has deferred prosecution of this case, it is clear

from the facts of the case and also from the government message that Alaska does prosecute cases of child abuse and this is a case that is traditionally prosecuted in civilian courts. The issue is not whether Alaska has deferred, but whether it is traditionally prosecuted.

MJ: Put your objection together form me, you are abjection on hearsay grounds or relevancy grounds on the issue? I heard your objection I am just having trouble putting your statement together with your argument.

DC: I am objecting on two grounds, hearsay and relevancy. It is clear that Alaska does prosecute these cases, that it is traditional;y prosecuted in civilian courts and it is hearsay because it is an out of court statement offered for the truth of [17] the matter asserted not within any hearsay exceptions. As far as relevancy is not whether they have deferred but whether they are open and available.

MJ: Trial counsel response?

TC: Yes your honor, for preliminary questions the judge is not bound by the rules of evidence except those with respect to privilege Rule 104. With respect to this letter from the Attorney General, it is a traditional way in which expressions of deferral are presented to Coast Guard Court-Martial, promotes judicial economy, there isn't any question as to the authenticity of the letter, the original is signed, the defense counsel has spoken to the person who wrote it. Government has stipulated to an addition to that letter because the defense has not received a written response. Defense has had adequate opportunity to detest the authenticity of the letter and has done so.

MJ: The objection was not on authenticity grounds.

DC: No sir, it was not.

TC: As an alternative the government would offer it under the other exceptions under Rule 803(24) and 804(b)(5) as having adequate indecia of truthfulness of the facts asserted therein.

DC: I would note your honor, that the defense has not received the required notice of Rule 803(24) and 804(b)(5) and that it does not answer the relevancy objection.

MJ: You are not objecting to Appellate Exhibit X, the message?

DC: No sir.

MJ: We are only dealing with Attorney General letter.

TC: Your honor, although it is not usually necessary to go into some of the hearsay exceptions for this purpose, it would appear that the letter does reflect the existing state of mind of the declarant. It is not offered for the truth of the matter asserted therein, but for the declarant's state of mind, a decision is made, the reasons for it. Given that it would appear to get over the hearsay exception, particularly since it also has other indications of trustworthiness, defense counsel has had the opportunity to call him up and determine the authenticity which he is not objecting to. That appears to get over the two major problems with the admissibility of the letter. For instance, the letter declares it is a Coast Guard policy, well if that letter is not being presented for the truth of that matter asserted but only as a recorded document a document which records the state of mind of the person sending the letter.

[18] MJ: Response.

DC: Your honor, it is not a question of the state of mind of the person sending the letter, if the state of mind was simply that it was deferring prosecution that might be one thing, I had no intention to prosecute the case at this particular time, that is one thing, but whether it goes on and on stating Coast Guard policy stating what the Coast Guard interest is and finally stating that Alaska is concerned about the expense that might be incurred by Coast Guard personnel. At sole surplusage it has no relevance to the issue at this time. I cite *United States v. McCarthy* cited in my brief in support of my motion to dismiss, *McCarthy* notes that the fact that a civilian court is less interested in prosecuting is not relevant to the determination. What is relevant is are they available, Alaska is available. I stress my objection again in relevancy especially considering the surplusage that is contained in this letter. The defense will stipulate, however, that Alaska has deferred prosecution at this time.

MJ: I am not going to except oral stipulations. If there are going to be stipulations offered they will be in writing to accordance with the rules. If counsel want to get together on that side of things to offer stipulations and try to agree on them, that is one thing, but lets not do it orally. Let me defer—let me accept Appellate Exhibit X and defer on Appellate Exhibit IX for the moment.

TC: The government would call Chief Telephone Technician James R. Truby.

DC: Your honor, at this point the defense would request a brief recess before we begin taking testimony.

MJ: Are you looking for a noon recess or just—

DC: Brief recess.

MJ: We will reconven at 1145, the court will be in recess.

The 39(a) Session recessed at 1150 hours, 3 June 1985.

The 39(a) Session was called to order at 1145 hours, 3 June 1985.

MJ: Please be seated, the Article 39(a) Session will come to order.

TC: Your honor, all persons who were present when the Article 39(a) Session recessed are again present, no person [19] required to be present is absent. Chief Telephone Technician James Truby is in the courtroom and on the witness stand.

Chief Telephone Technician James R. Truby, U.S. Coast Guard, was sworn, and testified as follow:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Please state your full name, the organization you are attached to and your service.

A. James Ross Truby, Telephone Technician Chief, Electronics Engineering, Third Coast Guard District, U.S. Coast Guard.

Q. Chief Truby where do you live at the present time?

A. Barracks 513 sir.

Q. On Governors Islands?

A. Yes.

Q. Where were you assigned previous to your assignment on Governors Island?

A. Group Seattle Washington sir.

Q. And your assignment previous to that?

A. Seventeenth district triple e.

Q. During what period of time were you in the seventeenth district?

A. Between the summer of 1979 and the summer of 1982.

Q. What city did you reside in?

A. Juneau Alaska.

Q. Do you have a family Chief?

A. Yes I do sir.

Q. What does that family consist of?

A. I have a wife and two children. My children's ages are presently 16 and 11 and they are daughters.

Q. Did you accompany you on your tour in Juneau Alaska?

A. They did sir.

Q. Where did you live in Juneau?

A. I lived in the Mendenhall Valley area in a section of that area called Sleepy Hollow on McGinnis, I believe the address was 4407 McGinnis.

[20] Q. Were you familiar with Petty Officer Solorio when you were in the seventeenth district?

A. I did know Petty Officer Solorio was stationed in the district and yes I had talked to him sometimes, but I was not socially associated with the man.

Q. Do you know where he lived in Juneau.

A. No sir I understand he was in the Mendenhall Valley but I did not know where his home was.

Q. About how far is it from the Mendenhall Valley - was your house government housing or private housing?

A. It was private housing sir.

Q. Purchased or leased?

A. I owned by home.

Q. Is there or was there any government housing in the Juneau area for Coast Guard personnel?

A. The only government housing I am aware of was the Admiral's quarters the rest was purchased or leased.

Q. In general how did personal attached to the seventeenth district office in Juneau obtain housing.

A. Routinely sir the people would come and go into temporary quarters while they hunted for a house to either buy or rent, lease, whatever and this would generally require the man's wife to go out and get a job and qualify for a loans and so on so they could by a home.

Q. Did some people rent?

A. Yes sir, I am not aware specifically of people who rented but yes some people did rent. There were people who owned homes up there who would lease them out hopping to return sometime and some people who lived there who own more than one home for income property.

Q. How would you characterize the cost of housing in Juneau Alaska?

A. Extremely high sir. Very difficult to get at that particular time and at the time I got there was a volital time that is when the market rates for money were fluctuating up and down.

Q. Due to the high cost of housing is there any assistance available to Coast Guard personnel assigned in Juneau Alaska?

DC: Objection, counsel is testifying on the basis for whether any housing assistance is based on the high cost of housing.

[21] MJ: Objection is overruled, the witness can answer if you can.

WITNESS: Will you restate the question sir?

Q. Is there any Coast Guard assistance of any kind available to obtain housing in the Juneau area?

A. Although I didn't personally use it, there were some loans available through the moral people that could be made for specifically closing cost and things of that type. I am not aware of any other.

Q. Were there any standard allowances available to assist in making house payments?

A. Yes sir, at the time that I got there we were on what we call HOLA and COLA which effectively doubled my pay when I got there. It was a substantial amount and helped me make my payments on my home which were rather high. The problem was that you had to qualify for the loan—qualify for the home which meant your income had to be substantially high than that even. Most of the time the wives had to work.

Q. What was the distance from the Mendenhall area to the district office?

A. I estimated it at right in the neighborhood of eight to ten miles.

Q. In the Mendenhall area can you estimate what percentage of people in that area were Coast Guard families?

A. I think that—well there are a substantial number of people living in the Mendenhall area that were associated with the Coast Guard in some way and I would say, as long as nobody holds me to it, somewhere in the neighborhood of one and six maybe.

Q. Who were the major employers in the area?

A. The major employers as far as I know in the order of the most people employed would be the State of Alaska, I believe the Forest Service and then the Coast Guard. I guess it would be safe if it is not forest service it would be very safe to say the State of Alaska and the Federal Government were the largest employers in that town.

Q. In the Mendenhall Valley area did neighbors tend to show the employment of their close neighbors?

DC: Objection, Chief Truby can't testify what other neighbors knew.

MJ: Sustained.

[22] In the Juneau area what was the reputation of the Coast Guard?

A. Extremely good sir, extremely good.

Q. Do you have an opinion as to why the Coast Guard's reputation was so good?

A. Yes sir, the Admiral upon arriving in Juneau routinely had all the Chief Petty Officers when they did arrive once a month, come in to visit him. We were encouraged to become active citizens in the town and we were told at that time that

the Coast Guard was expected to be a good citizen in the town and that our participation in the different activities that the people had in the area was encouraged. Chief Petty Officers had activities that dealt with the senior citizens dinners and so on that was a real social event for the people in the neighborhood. We put it on once a year for senior citizens and it was a sit down meal for those people, a real social event for them and the only price of admission was proof that they were over 65 years old.

Q. Was there any concrete manifestation of the high reputation of the Coast Guard that you can recall? Did Coast Guard personnel receive any special considerations that you should attribute to the high reputation of the Coast Guard?

A. Yeah, one of the things that took place was that when I got there my wife had no trouble getting a job whatsoever. They would ask her what does your husband do and she would indicate that I was working in the Coast Guard and the people would automatically know that they had someone who would be there for three years minimum. You are respected in the town, you are accepted, your financial problems that you have in most towns weren't as difficult in that town and I think that because they had such a high number of retirees from the Coast Guard you are excepted in the town almost immediately. It wasn't the six month learning curve like you have in most towns.

Q. If a Coast Guard active duty person sexually abuse a daughter of another Coast Guard active duty person in Juneau Alaska, what effect would that crime have on the reputation on the Coast Guard in the community of Juneau.

DC: Objection, it is pure conjecture on the part of the witness. He is not present in Juneau, he has not stated that he knew of any such instances while he was in Juneau, he can only base an opinion on pure conjecture.

MJ: Sustained as to the form of the question.

Q. Would there be any effect on the reputation of the Coast Guard—

[23] DC: Again, objection the form has not substantially changed he is asking for the same knowledge, the same conjecture that the witness does not or cannot have.

TC: Let me try rephrasing it.

Q. Do you have an opinion as to whether there would be any effect on the reputation of the Coast Guard should a Coast Guard individual sexually abuse dependent in the Coast Guard?

DC: I renew my objection your honor, again it requires some basis.

MJ: Overruled.

TC: I have not asked you your opinion only if you have one.

WITNESS: Yes I have one.

Q. What would be the basis of that opinion?

A. The basis of my opinion would be that in that town the news papers had what they called Police Blotter and different things that took place in the town, drunk driving incidences or anything like that people were arrested for whatever, their names would be put in the Police Blotter and what they were charged with. From that standpoint this is true of a lot of towns not just Juneau, but the people would state who was arrested for what and in the case of a Coast Guardsman, as we all know, they would also state that he was of the Coast Guard as part of the statement of identifying the person. I believe from that standpoint—have you asked me for my opinion?

TC: Not yet.

WITNESS: I better stop then. That is my basis.

Q. In your opinion would there be an impact on the Coast Guard's reputation if such an incident of child sexual abuse occurred.

A. Yes sir, I believe there would be. I believe it would be substantial for a short period of time and then the Coast Guard's good reputation would prevail over a longer period of time. The town is a very cohesive town, very together bunch of people and I am sure that if something like this was to happen they start inspecting more of their activities where adults supervising children and insure to themselves as best they could that this would not happen again.

Q. You mentioned in your testimony that Coast Guard personnel are encouraged to volunteer, if the Coast Guard perpetrator of a sexual abuse incident against a Coast Guard

[24] dependent were also very involved in children's activities in the city of Juneau, do you believe there would be any impact on the Coast Guard's volunteerism?

DC: Objection.

MJ: Sustained.

TC: Your honor, I'll ask him his basis for that.

Q. Do you think there would be an impact on the coast Guard's volunteerism.?

DC: Excuse me your honor, I believe that my objection was sustained.

TC: Pardon me.

Q. If such an incident of child abuse in Juneau Alaska by a Coast Guard person against a Coast guard dependent were revealed, do you have an opinion as to whether there would be an effect on the morale of the Coast Guard people up there?

A. Yes sir I do.

Q. What is the basis for your opinion?

A. I believe that—putting that question to myself, if I was active with children, say as a youth adviser or something like that, I would become under inspection and it would set me off center—

MJ: Excuse me, once again Chief you have been asked for the basis of your opinion not the effect that it would have on your or anyone else but why you think what you do think.

WITNESS: I believe it would have an effect on me and I believe it would be because I would come under inspection as far as my integrity is concerned. If I was dealing with children I would be looked at in at negative light until I proved myself otherwise.

Q. You stated that you had children up in Alaska.

A. Yes sir, I had two.

Q. If such an incident of a Coast Guard individual sexually abusing Coast Guard dependents came to light, do you have an opinion as to whether it would effect morale personally, in your personal and family life?

A. Yes I do.

Q. And what is the basis for that?

[25] A. It would create worry on the part of my wife and my self as far as our children are concerned there and from that standpoint my morale would be an unsure type thing, I would be unsettled.

Q. When you are transferred—how many times have you been transferred in the Coast Guard?

A. Bunches of times.

Q. How long have you been in the Coast Guard?

A. I have been in the Coast Guard off and on for the past 20 years this month with a three year nine month stay out of the Coast Guard. I never really counted the number of transfers I have had sir, but I have two three year tours and the rest are less than that and three of them are nine months.

Q. When you and your family are transferred is there some group of people you rely on most when you need help?

A. Yeah, we rely on ourselves and the Coast Guard people at the other end of the line to sponsor us and get us in to the neighborhood and so. The sponsor program is a very important program.

Q. Do you normally know your sponsor a head of time?

A. I would say it is about a 50/50 time that I know the person. In the case of my Alaska transfer, yes I did know my sponsor.

Q. Would the revelation of a Coast Guard active duty person sexually abusing dependents of Coast Guard active duty personnel, would that have any effect on the way you trust other Coast Guard people?

A. I think so from the standpoint that I assume that I know a person a little bit better I guess because I am associated with them in the Coast Guard. I would trust them because of that association in some instances. This would make me a little more leery, yes. It would make me aware of the fact that it can happen closer to home than you think.

Q. Do you know Frank Grantz?

A. Yes sir, very well sir.

Q. How did you come to know him?

A. He was our Yeoman in the office I worked in.

Q. Where?

A. Electronics engineering at district Seventeen.

Q. Can you just describe some of his salient characteristics since he has not appeared before this court?

[26] A. Frank Grantz is a very big man, he's very strong individual at the same time he is child like in some ways.

DC: Objection your honor, I believe the question asked for physical characteristics.

WITNESS: I am sorry, I didn't understand the question.

Q. Are you aware of the general nature of the allegations that are before this court?

A. Yes sir.

Q. Have you spoken to Frank Grantz about these proceedings or the events leading up to it?

A. Not about the events leading up to, I ran into Frank several weeks ago when he was onboard the Island and I asked him what he was here for and he told me it was an Article 32 hearing. I asked what was it about and at that time he did not answer me, he indicated that there was a problem with his family and began to cry and I backed off and didn't ask any more questions. After that I found out what it was through the questioning prior to coming here, you and the defense attorney asking me questions about it.

TC: That is all I have your honor.

MJ: You may cross-examine.

DC: Your honor, do you wish to proceed with cross-examination now or break for lunch and we could continue with cross-examination after recess.

MJ: Do you have an estimate how long you are going to be?

DC: Between ten and twenty minutes.

MJ: I think we had better break. Chief I will have to ask you to return and not discuss your testimony or your knowledge of the case with anyone other than counsel during our recess. The court until 1300 hundred will be in recess.

The 39(a) Session recessed at 1210 hours, 3 June 1985.

The 39(a) Session was called to order at 1300 hours, 3 June 1985.

MJ: The Article 39(a) Session will come to order, please be seated.

TC: Your honor, all persons who were present when the Article 39(a) Session recessed are again present, no person

[27] required to be present is absent. The witness is still on the stand.

MJ: You are still under oath.

WITNESS: Yes sir.

MJ: You may proceed.

DC: Thank you your honor.

CROSS-EXAMINATION

Questions by the defense:

Q. Chief when you were stationed in the Seventeenth district, you said you lived in Juneau?

A. Yes sir.

Q. Specifically where did you live?

A. 4407 McGinnis.

Q. Was that in Juneau itself or in Mendenhall Valley?

A. Mendenhall Valley sir.

Q. Other individuals or other personnel assigned to the Seventeenth, where would they typically live?

A. The large share of the people did live in the Mendenhall Valley, that was the primary housing area. There are other areas but—

Q. What are those other areas?

A. I can't remember the creek but five mile area had some housing in there—

Q. Was that Lemon Creek?

A. I believe so, yes sir. Of course there was Juneau proper and there was some housing there, there was some housing South of town but it's basic restricted to homes right on the road, the highway went out five or six miles and quit and there were houses along there they were routinely right along the edge of the road. The there were homes out near Auke Lake area which is further out the highway then of course the highway continued on for about twenty miles—

Q. Is that North or South?

A. North sir, and there were houses out there too, but like I say the major share of the people lived in the Mendenhall Valley.

Q. That was the major housing for all of Juneau wasn't it?

[28] A. Yes sir.

Q. And how many people as a whole resided in the Juneau community?

A. I counted 20,000 nominally. I think there were more during the winter time people would come in from places that they couldn't possibly exist during the winter time and live there and then go back out in the Summer.

Q. So about 20,000 total population?

A. Yes sir.

Q. And how many personnel were assigned to the district office?

A. Somewhere in the neighborhood of 200 or 250 people I would call it, I don't exactly.

Q. So in fact when you said it was a one in six ratio of Coast Guard to civilians it is actually closer to one in 1,000 isn't it?

A. I was calling it for the Valley area and I guess I could be wrong but the Valley area was the major housing area and I thought that coasties among there was one in six.

Q. But civilians live primarily in the Mendenhall Valley also.

A. Yes.

Q. So would you agree that one in 1,000 is closer to the accurate ratio given the district population and the Juneau population? 200 over 20,000.

A. I can't put it 200 over 20,000 because 20,000 people didn't live in the Valley but maybe I am off I don't know.

Q. When you lived in Juneau your family was with you.

A. Yes sir.

Q. Where is your family right now?

A. My family is in St. Petersburg, Florida.

Q. And why St. Petersburg, Florida?

A. My wife has a grandmother who is 98 years old yesterday and a father who is 75 neither are able to care for themselves. I transferred to Governors Island to facilitate moving my household goods to St. Petersburg as a stop-gap measure putting both those members in a nursing home.

Q. Your particular family situation hasn't effected your ability to require a humanitarian transfer or your need for a humanitarian transfer?

A. No sir. With the number of years I have in the Coast [29] Guard I would under no circumstances request any kind of humanitarian transfer.

Q. You stated on direct examination that you've been in and out the Coast Guard for 20 years with a three year nine month break. Are you proud to wear the uniform?

A. Absolutely.

Q. My guess is that you love the Coast Guard.

A. Yes sir, I have taken some bumps in my time and I have gone over some recently but I still do love the Coast Guard.

Q. You are aware in your 20 year career that there have been many offense committed by Coast Guard members aren't you?

A. I am not aware of -

Q. That offenses do happen.

A. I would say the ratio is about the same as in civilian life but I am not aware -

Q. But you are aware that offenses do occur and that court-martials do occur.

A. Yes sir.

Q. Have those offense effected your morale or your love of the Coast Guard?

A. They haven't effected my love for the Coast Guard I would say that there are times when what someone else has done has brought people to look at me in a different light when they would had they not done it.

Q. You stated that when you were in Juneau the paper publishes the name of an individual involved in an offense and their organization, the Coast Guard.

A. Yes sir.

Q. When you were in Juneau did you get any discounts because you were in the Coast Guard?

A. Yes sir, I did.

Q. Did you get credit more easily because you were in the Coast Guard?

A. I believe so.

Q. The fact that people's names being in the Coast Guard were published in the paper, did that effect your ability to get discounts?

A. I don't believe so, no sir.

A. Not that I know of, I couldn't - no not that I know of.
[30] Q. You stated that you presently live on Governors Island in the BEQ?

A. Yes Barracks 513 sir.

Q. Prior to discussing this case with Mr. Couper and myself, had you heard anything about the allegations of child sexual abuse?

A. No sir, only that - like I said when I ran into Frank I asked him what he was doing here and he said it was an Article 32 hearing, I asked him what for and he got very teary eyed and I stopped.

Q. So until you had contact with people involved with this case you were aware of no effect on morale on Governors Island were you?

A. Impact from this case on morale on Governors Island?

Q. That's correct.

A. No sir, I was not aware of any allegations of any sort until then.

Q. Do you keep contact with anybody in Juneau?

A. Yes my wife does, we have friends that live there, I don't keep contact with them directly.

Q. Through contacts with your wife are you aware any effect on the reputation, morale, military discipline of the command in Juneau?

A. No nothing was mentioned that I know of.

Q. You owned your home in Juneau you said?

A. I bought it, yes sir.

Q. You received a housing allowance?

A. Yes sir.

Q. Are you aware that all Coast Guard personnel who were living on the economy were receiving a housing allowance?

A. I can't say that all do, I am under opinion that the only thing that they can't get is if Alaska is their home they can not get overseas pay, everything else is an allowance.

Q. But they do get allowance?

A. Yes sir.

Q. And that's normal?

A. Couldn't afford to live there any other way.

Q. As far as affording to live there you said that most wives had to work.

[31] A. I believe so, yes sir they had to at least go to work long enough to qualify for a loan. I can expound on that if you want.

Q. Not just yet. That's because the lender would look at the combined income to determine if you were qualified for the loan.

A. Exactly sir.

Q. You have been transferred many times you said.

A. More than most people.

Q. Have you lived on the economy in many of the places you have been transferred?

A. I have lived in government quarters only twice, I have lived in government lease quarters and that is among the people in the economy, yes most of the time.

Q. But when you had to go out and rent or purchase a home, have you done that more than once?

A. Yes more than once, yes sir, I can't say it was all the time.

Q. Each time you lived in quarters other than leased housing or government quarters you received a housing allowance didn't you?

A. You receive a housing allowance if you are not in government quarters.

Q. The amount of housing varies depending on the cost of living in each area doesn't it?

A. It does not with the variable housing allowance sir but over the years no it didn't necessarily.

Q. But now it does?

A. Now it does, yes.

Q. Did it in 1982 to your knowledge?

A. It did overseas sir, we were like I said HOLA/COLA area. In 1982 they had changed to the rent plus program, I think they are back at VHA now.

Q. They being the Seventeenth district?

A. They being the Coast Guard had gone to a rent plus program.

Q. You stated that because you in the Coast Guard your wife had no problems getting a job.

A. Yes sir.

[32] Q. Would she have had no problems getting a job whether or not she was qualified because you were in the Coast Guard?

A. I believe she would have had a bit more trouble because the major factor there is that people come into town and get a job and say they are going to be there for a long period of time and they keep the job long enough to get up enough money to go somewhere else. They have a portion of the society that just floats around and moves and when they have a Coast Guard wife they know they've got her there for three years.

Q. But your wife couldn't have gotten a job if she wasn't qualified for the job.

A. I am sure of that too, yes.

Q. You also stated that now that you have learned of these offenses you are a little more careful with your children as far as who you trust them with.

A. Yes I have spoken to the wife at length on it since the discussions with yourself and the Lieutenant Commander. We have talked to the girls both in an instructional manner as well as past history. I would say it is something you don't try you don't even think about until something like this happens and then yes you have to take a look at your life and how things are and how things were and so on.

Q. Would you take the same hard look at your life if an individual in St. Petersburg, Florida was charged with child abuse or child molestation?

A. I can only tell you what we have done and that is we have brought about more of an awareness with our children because of the explosion of cases that we have become aware of.

Q. From the media?

A. Well, that's where I hear about them the most, yes sir. There is an awareness now that there wasn't six months ago even.

Q. And that awareness is generated not just by Coast Guard offenders, but by all offenders, is that right?

TC: Your honor, I don't mind leading questions but quite a number of times defense counsel has been testifying with

virtually only a nod of the head required from the witness. I believe that goes too far in the way of leading questions.

MJ: The objection is overruled.

WITNESS: Would you ask the question again sir?

Q. That increased awareness, is it a result of all the offenses whether committed by Coast Guard personnel or civilian personnel?

[33] A. Yes sir, it is an awareness from that standpoint. In this particular case I queried my wife and talk to the children from the standpoint as far as the allegations are - my children did associate with the Petty Officer Johnson's children and we did ask them for that reason.

Q. Has this case effected the way you trust your other Coast Guard friends?

A. I would say that the best answer for that sir is that I would be more careful. Yes, I would - it doesn't change my trust of people I have really looked at hard, I would be more careful.

Q. How about if that person was a civilian versus an uncle or a cousin, would you still be just as careful?

A. Yes sir, I believe so because of this.

Q. Now that you have learned some of the facts and circumstances about this case, would that effect the way you use the sponsor program at all, would you continue to use the sponsor program?

A. Yes I would use the sponsor program still. In the case of my transfer to Juneau though, my sponsor was a Lieutenant Commander and his wife who were friends of the family and they did, while we were out house hunting, take care of the children. From that standpoint I would be more careful.

Q. The Lieutenant Commander was a friend of yours?

A. The Lieutenant Commander was a friend of the family, more so of my parents than of myself, but yes I was associated with him and did know him.

Q. So in any event whether a sponsor was a friend or relative or just an acquaintance, you would still be more careful with your daughters as far as their care.

A. I would treat - yes sir, I would treat Coast Guardsmen and people who I would - yes I would be more careful.

Q. Just one more question. As far as Juneau being a cohesive town, in all the times that you have been transferred to populous areas or small town area have you ever seen similar type of cohesiveness for instance in Puerto Rico?

A. Yes sir, it is a different type of cohesiveness in that it was a military community and we were basically sequestered onboard base to a large extent, but they were together. In Juneau the town was very cohesive, but it was the town itself with the military people mix in as a cohesive town. I was in Puerto Rico, shortly after I left Puerto Rico they had the case where quite a few military boys were blown away in a bus. There was some political unrest so there is a fair amount of difference between the two places.

[34] Q. I said one more question and I am going to ask you one more, lawyers are notorious for that. Any effect this may have on Juneau as a cohesive town would not be a long lasting, is that correct?

A. I believe that the effect would be substantial as far as negative impact on the Coast Guard and it would - the Coast Guard people would out live it. I would think that what would remain is the awareness and the education that you have to give children in order to keep this from happening again.

Q. And that would be the same as a civilian perpetrator, that awareness?

A. I would think so, maybe not in that town but yeah, I would think so.

DC: Thank you Chief.

MJ: Redirect?

REDIRECT EXAMINATION

Questions by the prosecution:

Q. If a civilian engaged in child molestation with a Coast Guard dependent, would that have any effect on the Coast Guard's reputation?

A. No sir.

Q. If a civilian engaged in child molestation with a Coast Guard dependent, would that have any impact on what you said about being more scrutinized in the Coast Guard?

A. The Coast Guard wouldn't be scrutinized, no sir.

Q. What is it that is different between the hypothetical Mr. Hochberg has given you about a civilian perpetrator of child molestation against a Coast Guard dependent and a Coast Guard perpetrator of child molestation against a Coast Guard dependent? What makes that different in your mind?

A. What makes it different is the Coast Guardsmen is in a position of I guess public trust and they are expected to hold themselves—hold their level of honesty and integrity up above what would be expected of other people. Civil servant.

Q. Police?

A. Yes sir.

TC: Just for the record, can I have this marked as the Appellate Exhibit next in order and I would ask that Chief Truby indicate on that map if your place of residence was on that map if you could indicate with a pen and a large X.

[The trial counsel handed the map to the defense counsel for inspection.]

DC: Excuse me your honor I see no reason to have this marked as an Appellate Exhibit, it is marked as an Appellate Exhibit already.

TC: I prefer not to mark up the existing Appellate Exhibit.

MJ: If it is for me maybe he can show me on the one that is already marked so we don't have to build a huge record.

TC: That will be fine.

MJ: On the one that is already in, let's not mark this one.

Q. Chief Truby I will show you Appellate Exhibit VIII which contains a number of maps. If your home appears on that map could you so indicate to the judge and once again give the address of that home?

[The witness was provided Appellate Exhibit VIII.]

A. Yes sir it does. My home doesn't show on the map but I can show you the street that it is on. [Pointing at the map] This is McGinnis right here and I am one house up, right there.

MJ: You are gesturing to a point off of Birch Lane in the center square of the top row of squares on the map of the Mendenhall Valley.

WITNESS: Yes sir, and the address was 4407 McGinnis.

Q. Do you know where Chief Warrant Officer Johnson, then Yeoman First Class and Yeoman Chief, lived?

A. Yes sir.

Q. How far were you from where they lived in blocks?

A. Nominally a block and a half sir.

Q. In a two block radius from your house, how many active duty Coast Guard people lived in that area?

A. Eight that I can be absolutely sure of sir.

Q. Any Coast Guard retired in that two block area?

A. I can't think of any in the two block area sir.

TC: Thank you.

MJ: Recross?

REXCROSS-EXAMINATION

Questions by the defense:

Q. Chief Truby the effect on the Coast Guard you stated would be different if it were a civilian perpetrator, correct?

A. If it were a civilian perpetrator—

Q. Civilian perpetrator of a Coast Guard dependent, would there be no effect on the Coast Guard as far as reputation or morale?

A. Not for the Coast Guard's reputation, no sir.

Q. But there would be an effect on the Coast Guard wouldn't there in your opinion if there was a Coast Guard perpetrator and a civilian victim?

A. The perpetrator is the person who would be charged?

DC: Yes.

WITNESS: Yes sir, I believe there would be.

Q. As far as the eight people in the two block area, can you state their names?

A. I can certainly try sir. Master Chief Cruz, Petty Officer Johnson, Master Chief Hagg, Chief Massie, myself, Hutemacker Lieutenant or Lieutenant Commander, there is an SK or YN1 that lived the next house over and I can't remember his name sir I am sorry, Chief Dalioan and that is it sir.

DC: I get six.

WITNESS: I named seven sir, myself included.

DC: Thank you no further questions.

TC: No questions your honor.

The witness was duly warned and withdrew from the courtroom.

Chief Warrant Officer Lawarance DeMarchi, U.S. Coast Guard, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Please state your full name, your rank, duty station and your service?

[37] A. Yes sir, full name is Lawarance Preston DeMarchi, rank is CWO2, unit is U.S. Coast Guard Training Center, Governors Island, position is Chief of Personnel Division.

Q. Mr. DeMarchi were you ever assigned in Juneau, Alaska?

A. Yes sir.

Q. During what period of time?

A. Twice sir, the first time from November 1972 to June 1974, the second time November 1977 to June 1980.

Q. Do you still keep in touch with people up in Juneau, Alaska?

A. Yes sir.

Q. As a result of your two tours in Juneau and keeping in touch with people in Juneau do you feel you are up to date on what is happening in the area?

A. To a degree, yes sir.

Q. Can you describe physically anything unique about Juneau that makes it different from any other town?

A. Yes sir. I describe Juneau as a close-knit closed-off community. I describe it that way because to enter Juneau you must either take a boat in or you must fly in, you can not drive in or drive out. The accessibility is limited. As far as the geographical physical lay out of the city, it is bordered on one side by a high mountain range, its bordered on the other side by a channel, on the other side of the channel its bordered by a island and at both ends of the city it is also closed off by mountains which creates a locked-in atmosphere.

Q. Is there anything unique about the population?

TC: I will withdraw that question.

Q. What kind of reputation has the Coast Guard enjoyed in Juneau?

A. From my experience of my tours in Alaska the Coast Guard in Alaska itself and especially in Juneau has a very high reputation, we are a very well thought of organization. We are well thought of for two particular reasons; number one because we are life savers and they consider us life savers in the true sense of the word and also they respect us because of our law enforcement image.

Q. If a Coast Guard active duty person engaged in child sexual abuse, the victim being a Coast Guard dependent daughter, do you have an opinion as to whether that would have any impact on the reputation of the Coast Guard in Juneau?

A. Yes sir I have an opinion.

[38] Q. On what factors of knowledge do you base that opinion?

A. I base that opinion on a number of factors; the news paper for an example, the news paper in Juneau is known as the South East Empire and the local news paper there in Juneau has what they call the police blotter, that is one segment of the news paper. The police blotter is use not only to transmit information from the news paper's point of view, but for the local population it is used sort of as - it may sound weird but it is a means of entertainment, people enjoy reading the police blotter to find out what is going on to find out the latest dirt. If a person was arrested it would make the police blotter, if a person was found to be in violation of a particular law in that area it would make the police blotter and that's my answer.

Q. And how would such a situation impact on the reputation of the Coast Guard in your opinion?

A. In my opinion again, if a member of the Coast Guard was arrested and their name appeared in the police blotter it would have an adverse impact because the police blotter would be sure to identify the member as being a member of the Coast Guard, it would not simply say "John Doe arrested for such and such violation", it would say "John Doe, U.S. Coast Guard, arrested" and it would not look favorable to us simply because we are thought of as law enforcement types.

Q. Other than a diminished reputation is there any other

specific way that the Coast Guard would be diminished in society?

A. There are possibilities, there are possible ways, I am not saying that it would –

DC: Objection again your honor, this can only be conjecture, the witness is stating that it is conjecture and he has no independent knowledge whether these ways would effect the reputation of the Coast Guard and should not be properly considered.

MJ: Response?

TC: I believe that is just what he is going to testify to, ways that it could effect the reputation of the Coast Guard.

MJ: You are looking for lay opinion?

TC: Yes, this is lay opinion and it also, I would anticipate, relates to a special character of that community and the specific ways that it may impact in the reputation of the Coast Guard.

MJ: Objection is overruled, you may answer the question.

[39] WITNESS: Yes sir, okay, getting back to the question, ways in which a bad image or bad incident could effect our reputation within the community. Because we are so well thought of in the community of Juneau, merchants, landlords and various business people in that city and in that area offer discounts to members of the Coast Guard. Some places offer like a ten to fifteen percent discount when you make a purchase of certain items. Landlords, and I can speak from personal example on this, not all landlords require deposits up front if you move into a residence. Hotel managers and so on do not require payment up front if you live in a hotel if they know you are in the Coast Guard. To a great degree I think those discounts are offered and those liberal payment terms are offered because of the fact that we are Coast Guard. I think that if our image or reputation was tarnished or damaged it could possibly effect the degrees to which they are willing to offer those discounts or liberal payment terms.

Q. Do Coast Guard people in Juneau have a base or commissary or exchange?

A. At Station Juneau which is located a couple of blocks from the district office there is station building and in that

station building there is a small exchange. There is no commissary, at least there was no commissary at the time I was station there. At the time I left there was also no commissary, there was a small exchange and there was more or less a liquor locker and place you could go and order merchandise out of the AFES catalog and so on.

Q. So the Coast Guard must rely on the community for those services rather than on a –

A. We rely on the community for our commissary privileges or needs, most of our exchange needs and definitely for housing.

Q. If there were reported an incident of a Coast Guard member sexually abusing a Coast Guard dependent, from your experience in the Coast Guard and your experience in Juneau, would that have any impact on the morale of the service in Juneau or in the Coast Guard in general if that word got out?

A. Would the incident itself have an effect on morale? No.

Q. How many children do you have?

A. I have one child.

Q. If the Coast Guard transferred – where do you live?

A. I am now residing on Governors Island.

Q. Are you aware of any child abuse cases on Governors Island in the past few years?

A. In the past few years? Yes sir, in the past few years, yes.

[40] Q. Do you know what impact that had on the morale on Governors Island?

A. I don't know how to describe it in terms of morale, but as far as concern by parents it had a great impact and it also had a great impact in the way that I let my daughter just walk around Governors Island. I go every where now with my daughter, every where, the swimming pool, the movies, every place.

Q. Is that a common practice on Governors Island to have parents go around with children all the time?

DC: Objection, there is no foundation for whether Mr. DeMarchi knows if it is a common practice or not.

MJ: Sustained.

Q. Do you know whether it is a common practice for parents to walk around with children?

A. Do I know if it is a common practice? Certain parents do and certain parents don't.

Q. If a person were assigned PCS to Governors Island who had engaged in child molestation at their previous unit what impact would that have on the attitudes and morale of parents and military members here and their families?

DC: Objection your honor.

MJ: Sustained.

TC: That is all I have your honor.

MJ: You may cross-examine.

CROSS-EXAMINATION

Questions by the defense:

Q. Mr. DeMarchi when you were assigned to Juneau you didn't know Petty Officer Solorio while you were in Juneau did you?

A. No sir, I did not.

Q. You correspond regularly with people in Juneau?

A. Yes sir, I do.

Q. Are you aware of any impact that these allegations made against Petty Officer Solorio have had on the Juneau community?

A. No sir, I am not.

[41] Q. If a Coast Guard member in Juneau was arrested for any crime, that would go on the police blotter?

A. To my understanding and to my knowledge, yes sir. If I may I can relay a personal incident.

DC: Please do.

WITNESS: My brother-in-law was arrested in Juneau. My brother-in-law and his family and I and my family were both stationed in Juneau at the same time, I at district and he on the Coast Guard Cutter Planetree. Without mentioning his name he was arrested in 1980 for drunken driving. He had come out of the Coast Guard EM club there in Juneau and he was caught weaving down Eagan Highway. He was arrested and put in jail for three days and that made the police blotter and it was a rather embarrassing situation.

Q. If your brother-in-law or some other Coast Guard member had been arrested for murder, that would also make the police blotter?

A. That would definitely make the police blotter, yes sir.

Q. So from the most minor to the most serious offenses, the Coast Guard member's name and organization would be put in the police blotter.

A. From my experience, yes sir.

Q. If a Coast Guard member was arrested and charged with murder and of a civilian, would that effect the reputation, morale, integrity, etc. of the Coast Guard in your opinion?

A. It would effect the integrity, it would effect the reputation. The question keeps coming up "would it effect the morale", I don't know if it would effect the morale but it would definitely effect reputation and integrity.

Q. Would the reputation of the Coast Guard be enhanced if the Coast Guard turned the individual who was charged over to the Alaskan state authorities?

A. I think it would sir, yes.

Q. As long as the individual was punished in some form, then the Coast Guard reputation would not be effected very much at all would it?

A. As I answer your question can I relate back to some of the things you and I discussed earlier or am I not permitted to do that?

DC: Sure.

WITNESS: Okay -

[42] MJ: Excuse me, what you may do here is explain an answer, what I don't want to do is drag up all the old conversations that you may have had in preparation for your testimony here today.

WITNESS: Yes sir. Sir as you and I discussed in the last couple of days the people in Juneau are very - they don't like cases or issues to drag on, they like quick action. If there is a crime committed they expect quick justice. From my observation people are willing to take the law into their own hands if they don't feel that the judicial system is being served quickly enough. I would think that if a person was arrested, whether

that person is a civilian or military, and that case was quickly handled, that people in Juneau would be very impressed. If a person was in the Coast Guard and the Coast Guard was extremely cooperative with the Juneau civilian authorities I would think that the people in Juneau would be very very impressed.

Q. And the Coast Guard reputation would be enhanced.

A. Enhanced? Yes sir.

Q. Mr. Couper asked you about some of the sex abuse cases that occurred a number of years ago here on Governors Island. You stated that there was some concern among the parents. Is that the same type of concern that is engendered when you read about cases of sex abuse in the paper and on TV in Brooklyn, Minnesota, or California or where ever?

A. Yes sir.

DC: Thank you, no further questions.

MJ: Redirect?

TC: No your honor.

The witness was duly warned and withdrew from the courtroom.

Chief Warrant Officer Larry Johnson, U.S. Coast Guard, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Please state your full name, your rank your present duty station and your service.

A. My name is Larry V. Johnson, United States Coast Guard Headquarters in Washington DC, I am a Chief Warrant Officer in the U.S. Coast Guard.

[43] Q. Mr. Johnson when did - have you ever been assigned to Seventeenth District?

A. Yes.

Q. When were you assigned to the Seventeenth District?

A. I reported there I believe in August or September of '78.

Q. And when did you depart?

A. I left there in June of '82 - '83 excuse me.

Q. Do you have a family?

A. Yes I do.

Q. Who is in that family?

A. My wife and two daughters.

Q. And their names?

A. My wife's name is Jo Ann, my oldest daughter is Amber and my youngest daughter is Carrie.

Q. Did they accompany you to Alaska?

A. Yes they did.

Q. Where did you live in Alaska?

A. I lived at 8920 Birch Lane in the Mendenhall Valley.

Q. I believe the judge has Appellate Exhibit VIII which contains a number of maps. I wonder if you might indicate to the judge the area where you lived.

[The military judge handed the witness Appellate Exhibit VIII. The witness looked at the map of the Mendenhall Valley attached to Appellate Exhibit VIII.]

MJ: The witness has indicated a position on the top row of blocks on the page in the center block to the right in the middle portion of that block approximately on fourth of the way from the bottom of the block up, drawing a circle generally around where it said Birch. Is that correct?

WITNESS: Yes sir.

Q. What type of housing did you have?

A. It was a single family dwelling, three bedroom with an attached garage.

Q. Did you rent or purchase?

A. I purchased my home.

Q. Was there any Coast Guard housing in the area?

A. No sir, there was not.

[44] Q. Were there other Coast Guard people around you?

A. Yes there was.

Q. If you can define a convenient area of reference, can you state how many Coast Guard people were in that convenient area of reference?

A. In the immediate area there was -

Q. What is that area of reference?

A. Within I'll call a city block, there was, counting myself, one two three four five six seven families that I can think of off the top of my head.

Q. Coast Guard active duty?

A. Yes.

Q. Did most of those families have children?

A. I believe all of them did.

Q. What was Amber's age when you arrived? - Never mind I believe we already have that.

Q. Who lived next door to you?

A. Richard Solorio lived on the left hand side of me facing the street.

Q. Where did Richard Solorio work?

A. Seventeenth Coast Guard District Office in the Federal Building in Juneau, Alaska.

Q. Is he here in court?

A. Yes he is.

Q. Would you point to him?

TC: Let the record indicate that he pointed to the defendant.

Q. Who lived in the Solorio house?

A. Richard Solorio, his wife, his two boys and at one time I believe it was a niece staying with them for some time.

Q. How did you come to know Petty Officer Solorio?

A. I believe we first met when he came home from work one day or just got acquainted to the house, I went over and introduced myself and then we came to know each other a little bit closer at work, saw each other more frequently.

Q. When you met him out in front of the house did you know that he was in the Coast Guard?

[45] A. Yes I believe I did because he had a Coast Guard sticker on his car.

Q. Did you - how did you come to know him at the office, through what types of activities?

A. Passing in the hall, I believe we had some mutual friends and some of it was job related, I had worked in two different offices when he working in one office and my job required me to take care of some business in his office.

Q. What was your rating at that time?

A. I reported there as a YN1 and I departed there as a YNC.

Q. Petty Officer Solorio's during that same period of time?

A. He was a YN1 the entire time.

Q. Did most of the yeoman at the, if you know, at the Seventeenth Coast Guard District Office building know each other?

DC: Objection, the witness can't testify as to what other yeoman knew.

MJ: Sustained.

Q. How did you get to work?

A. I normally drove.

Q. During the period of time when you were in Juneau did you always drive alone?

A. Not always, no.

Q. Who did you drive with?

A. I was in several different car pools or I rode with somebody who drove all the time and at one time I rode with Richard Solorio, we alternated driving.

Q. About what period of time did you do that, do you know?

A. I would say the most of the last year to 18 months.

Q. Was there a purpose other than transportation and economy for your car pooling with Petty Officer Solorio?

A. Convenience plus both of our wives had businesses in the house and that assured that one of the vehicles would be home in case they needed it.

DC: Your honor, I am going to object to the portion of the testimony as being irrelevant. Whether the wives had business in the house, whether they needed a car is not relevant to the service connection issue.

MJ: You are objecting to the answer not the question?

[46] DC: I am moving to strike that answer, yes sir.

TC: Your honor, the government would suppose it has some relevancy but what ever it is worth your honor can weigh that.

MJ: I am going to overrule the objection and state to both counsel that I recognize its remotely limited relevance.

Q. While you were commuting with Petty Officer Solorio did you or did you not wear the uniform when you were commuting back and forth?

A. I wore my uniform.

Q. How about Petty Officer Solorio?

A. I believe he did most of the time.

Q. Among the Yeoman in the Seventeenth Coast Guard District was there a common practice when ever you wanted to find information rate related that you couldn't put your hands on right in the book -

WITNESS: I am sorry, repeat the question.

Q. As a rated Yeoman is it a common practice to consult with other Yeoman when you can't find an answer right away?

A. Yes it is.

Q. Was there such an informal network at the Seventeenth District Office building?

A. They had some training going on in the building, it was announced but I didn't always get the word but I believe I attended one or two of the meetings.

Q. Who was directed to attend these type of training sessions?

A. I believe it was open to Storekeepers and Yeoman.

Q. Have you had an occasion to call on Petty Officer Solorio for advice while you have been a Yeoman or Warrant Officer?

A. I don't recall.

Q. Has he had an occasion to call on you for advice?

A. I was his personnel Yeoman at one time, he may have come down and asked me some questions.

Q. As a result of - did you ever let Amber play with people, over at someone's house that you did not know the family?

A. No not usually.

Q. Did she ever go over to play at the Solorio's?

[47] A. Yes she did.

Q. How often would she go over there to play while you were in Alaska?

A. I would say at least three to four times a week.

Q. Do you know if Petty Officer Solorio was home during any of these periods?

A. I am sure he was home sometimes.

DC: Objection, this has nothing to do with the jurisdictional motion, it may be relevant on the merits but it is certainly not relevant here.

MJ: Where are you going?

TC: It is just background your honor.

MJ: I'll overrule the objection.

TC: I recognize the objection to that particular question.

Q. When did your daughter reveal incidents that occurred in Alaska that are the subject of these hearings?

A. It was March of this year.

Q. Who did she divulge that to, do you know?

A. It was a school counselor.

Q. What actions did you take as a result of her information she gave to her counselor?

A. I went and sought aid from Family Services at Coast Guard Headquarters. The school counselor had recommended that we get into some sort of counseling, so I sought a reference from the Family Advocacy Program and they in turn directed us to a family counseling practice there were we live.

Q. Who specifically did you talk to in the Family Advocacy Program?

A. He name escapes me right now.

Q. Was it Brenda Watson?

A. Yes it was.

Q. Do you know basically what her training is?

A. I believe she has been a social worker with the State of Virginia at one time.

Q. Do you know about how many social workers the Coast Guard has there in the Family Advocacy Program?

[48] DC: Objection.

Q. Do you know?

A. Yes, I do know.

MJ: Overruled.

Q. How many do they have, social workers?

A. Two that I am aware of.

Q. Did you seek this counseling?

A. Yes we did.

Q. How many people are involved in this counseling?

A. Actually involved there are three right now, but my youngest daughter did see her on two occasions.

DC: Can we have clarification your honor, is Mr. Couper speaking about Brenda Watson or the Virginia counselor?

MJ: Maybe it can be cleared up.

Q. Where is this counseling being held?

A. It is being held with the State of Virginia Family Counseling.

Q. Is that a civilian or a military organization?

A. That is a civilian organization.

Q. Is this involve any cost to you?

A. It was initially, we have since filed CHAMPUS papers and the outcome of that has not been resolved.

Q. How often does your family go through this counseling?

A. Right now it is on a weekly basis.

Q. Has it been so since the initial report that Amber made?

A. Yes, as it has allowed.

Q. How has Amber's report of what happened with Petty Officer Solorio, how has Amber's report affected you in your job?

A. It has caused me stress in completing my responsibilities I feel that I am hindered in the time that I have to be away from my desk to do some of the preliminary things I have had to do with you and with the counseling. I feel that sometimes I am a little bit leery of taking on added responsibilities. I am always preoccupied with this.

Q. Have you been told whether continued counseling is advisable or necessary?

[49] A. At this time she feels there is no reason to terminate it, she recommends that we continue the counseling.

Q. If you were to be assigned to a place, a duty station where this type of counseling were not available, what would your reaction be?

A. If someone made me go somewhere else I would reconsider taking my family with me or not. I may not take them with me because the counseling would not be available and I would have to question about myself, too.

Q. Has this counseling been beneficial?

A. Yes it has.

Q. Do you believe it is necessary given your family circumstances right now?

A. Yes I do.

Q. Are there any other ways that Amber's report has affected you personally, not officially but personally?

A. Yes.

Q. In what ways?

A. I am very protective over her in the activities she participates in. I have to know where she is, what she is doing and who she is with. At times I may be over protective but that is just the way it is now.

Q. Have you spoken with some of your co-workers about what Amber's report or about what you are going through?

A. Yes I have.

Q. What have you told them?

A. I told them what she had told us and what we are going through at this time and why I am going to New York.

Q. Could you work with Petty Officer Solorio again?

A. I don't think so.

Q. How would you characterize your relationship with Petty Officer Solorio back in Alaska, not official relationship?

A. We were neighbors, we shared and borrowed things from each other as neighbors do. I think we both enjoyed watching our kids play together.

Q. Did you eat dinner at each others house or cook out?

A. I shared my grill with him now and then, but we didn't really have dinners with each other. There were occasions when we got together for parties.

[50] Q. Was he the type of person you might rely on if you needed a favor, if you went on TAD or you and your wife had to leave for some reason?

A. Certainly.

Q. Do you tend to trust Coast Guard people when you need a favor or something like that, to watch your kids or take care of something around the house?

A. Yes.

Q. Has Amber's report changed your trust in Coast Guard people?

A. To some extent.

Q. Has Petty Officer Solorio called you either officially or personally over the last few months?

DC: Objection, calls made at this point to one to four years

after any alleged incidents have taken place are not relevant to the service connection issue.

TC: Your honor, this one case I am thinking of in particular –

MJ: Where are you going, what is your theory?

TC: An Air Force case where part of the service connection that was established was the harassing calls and the effect on the member.

MJ: We don't have any charges of harassment through telephone calls.

TC: No your honor.

MJ: So what is your theory, where are you going, articulate your theory supporting the question.

TC: There was a telephone call soon after Amber's report –

MJ: You are giving me an offer of proof, I want a theory.

TC: I am referring to the Air Force case where the participant, I believe it was homosexual crimes, was making harassing phone calls to the other participant and that was part of the grounding of the service connection, the time away from the job, the mental anguish of the harassing phone calls.

DC: Your honor, those harassing phone calls, I believe, were part and parcel to the offense and that was at that point relevant to the service connection issue. These phone calls have [51] occurred long after any offenses took place if any offenses did take place and certainly not involved with the offenses. If they want to be charged as separate offense, which I don't believe they can be, that may be a different story.

MJ: Once again trial counsel, how, if at all, are any phone calls which may have taken place relevant on the motion before the court?

TC: That harassing phone calls affect the members productivity, his family particularly if the phone calls are immediately after a report of abuse. It also shows by one concrete example the impact of the basic offense on the family and on the member by his reaction to the phone call.

MJ: I'll overrule the objection and allow the witness to answer and make the same comment I made previously that I

recognize the far tangents of relevancy that we are dealing with right here. There are some there, not a lot, I haven't heard the answer yet but from what I can see from the question.

Q. Did you receive any phone calls from Petty Officer Solorio?

A. Yes I did.

Q. When and where did you receive these calls?

A. He called me at work once, I believe it was in late February, asking me a business question relevant to my job and his job. Then it was later on in, I believe it was March, he called the house and it was right after Amber had brought this all out.

Q. Was there anything unusual about that call? Had he ever called you before?

A. No I didn't really see any reason for him to call me and his initial comments were that he got a new phone line or subscribed to a new phone service so it was cheaper to call.

Q. Was there anything else that he mentioned?

A. He thanked me for expediting the reply to him that he initially requested at work.

Q. What impact did this phone call have on you and what action did you take if any?

A. I was reluctant to say anything at all, in fact the latter part of the phone call I didn't say anything.

Q. Why was that?

A. I couldn't understand why he was calling and knowing what I knew at the time I had nothing to say to him.

[52] Q. Did you take any other action as a result of this phone call?

A. I told you.

Q. Did you take any other action with respect to your family?

A. I told my daughter not to answer the phone, that Carrie would have answer the phone to screen her calls if we were not home.

Q. Why was that?

A. Because it upset Amber tremendously.

Q. I believe Mr. Hochbert has asked you a question about whether your reactions to Amber would be any different if it

were a civilian perpetrator rather than Petty Officer Solorio who is accused. Would this have a different effect on you if it was a civilian accused to of doing these things to Amber?

A. I would feel the same no matter who did it, but the fact that it was someone I knew closely and was a Coast Guard member, a friend in the Coast Guard, that made it worse.

Q. Can you articulate in what ways it makes it worse to you personally?

A. It is like someone you trusted and knew very well turned around and stabbed you in the back.

Q. Does the family counseling that you are undergoing right now, do you believe that is necessary for your future mental health and your family's?

A. Yes I do.

Q. Have you been told about how long this counseling will extend?

A. It could take as much as a year or more.

Q. Besides being next door neighbors what other contacts do you know Amber had with Petty Officer Solorio?

A. She participated on a city youth soccer team which Richard Solorio coached. She participated on a city youth bowling team which Richard Solorio was participating in. Trick or treat type things, we would go out together on that.

Q. Were these youth teams Coast Guard sponsored or Coast Guard related in anyway?

A. They were city, they were sponsored by the city but there were Coast Guard and civilian people mixed in the teams.

Q. How did Amber get home from these events?

A. If we didn't bring her home she would normally come home with Richard Solorio.

[53] Q. Would you let your daughter ride home with someone you did not know?

A. Not normally.

Q. What is the Coast Guard's reputation in Juneau while you were there?

DC: Objection your honor, this getting to be cumulative, it has been asked -

TC: I will withdraw that. That is all I have your honor.

DC: Your honor, the defense would ask for a ten minute recess.

MJ: Probably a good idea for all of us. We will reconven in ten minutes, court will be in recess.

The Article 39(a) Session recessed at 1425 hours, 3 June 1985.

The Article 39(a) Session was called to order at 1435 hours, 3 June 1985

MJ: The Article 39(a) Session will come to order.

TC: Your honor, all parties who were present when the Article 39(a) Session recessed are again present, no persons required to be present are absent, Mr. Johnson is on the stand.

MJ: Defense counsel may cross-examine.

CROSS-EXAMINATION

Questions by the defense:

Q. You stated on direct examination that you friends, that you trusted Petty Officer Solorio?

A. Yes I did.

Q. The relationship you had with Petty Officer Solorio was based primarily on the fact that you were neighbors was it?

A. That was part of it, yes.

Q. Would you have car pooled to work with him at any time if you wouldn't have been next door neighbors?

A. If the car pool worked out with him it wouldn't have made any difference neighbor or not.

[54] Q. That car pool would have been based on geographic relationships and not necessarily friendship relationships?

A. It was based on we were both in the Coast Guard working in the same building.

Q. Geographic relationships.

A. Yes.

Q. When you car pooled, what time would you leave in the morning?

A. I believe we left a little after seven o'clock in the morning.

Q. And when would you return?

A. Work was over normally at four fifteen.

Q. So you would leave at four fifteen?

A. Yes.

Q. That car pool stopped primarily because Petty Officer Solorio started working late didn't it?

A. That is correct.

Q. So you stopped car pooling based on his schedule?

A. Yes.

Q. Your relationship between your family and the Solorio's developed also because your daughter was good friends with Brian Solorio, Petty Officer Solorio's son.

A. She first met Brian that is correct.

Q. She met Brian before you met Petty Officer Solorio?

A. I believe so.

Q. When she when over to the house it was primarily to see and play with Brian.

A. That is correct.

Q. That relationship between the families would not have been the same if you had children of different ages would it?

A. I don't know.

Q. The relationship developed when your daughter began bowling on the same league that Petty Officer Solorio participated in, as that relationship developed a family relationship developed, is that true?

A. I don't understand your question.

Q. As your daughter became involved in bowling, the same bowling league that Petty officer Solorio assisted in, your family relationship continued to develop?

[55] A. We were still friends, yes.

Q. That helped the friendship because the children were engaged in the same activities.

A. Not necessarily.

Q. Amber and Brian went to school together didn't they?

A. Yes.

Q. And that also helped build up that relationship.

A. It was already established.

Q. But it continued didn't it?

A. It continued.

Q. If Amber hadn't been friends with the children there would have been less contact between the two families.

A. More than likely.

Q. The relationship continued as a result of the soccer team that Amber played on.

A. Yes.

Q. Can you give me an estimate, two five seven, the different duty stations you have been assigned to in your career?

A. I believe I am on my eighth assignment.

Q. Eighth different geographical area?

A. No, I had two assignments in Southern California, I was stationed at Oklahoma City twice.

Q. And each time you moved, did you make new friends?

A. Yes.

Q. Are some of those friends civilian?

A. Yes.

Q. Does your daughter, both Amber and Carrie, become friends with civilians children as well as military dependent children?

A. Yes.

Q. And it is typical for your children to get to know and play with next door neighbor especially if they have children the same age?

A. If there are children around, yes.

Q. So when you socialize with Petty Officer Solorio and his family it was primarily with regard to civilian off base activities wasn't it?

A. Neighbor functions, yes.

[56] Q. At the Coast Guard District office in Juneau, you and Petty Officer Solorio never worked in the same office did you?

A. No we did not.

Q. There was a time when you were not even on the same floor as Petty Officer Solorio.

A. That is correct.

Q. And your contact with Petty Officer Solorio at work was fairly limited.

A. For the most part, yes.

Q. How long have you been in the Coast Guard?

A. 16 years.

Q. Do you have any strong feelings about the Coast Guard?

A. Yes I do.

Q. Positive feelings or negative?

A. Positive.

Q. Are those feelings about the Coast Guard Changed as a result of these incidents?

A. To some extent they have, in a small way they have.

Q. Do you think that the Coast Guard is not as good a place to work, organization to be involved with because of these incidents?

A. As an organization I haven't loss any feelings about the organization.

Q. You stated on direct examination that you are cautious now with whom your daughters go to visit and who they associate with.

A. Yes.

Q. Is that the case with all male adults not only Coast Guard male, is that true?

A. Yes it is.

Q. You also stated that you wouldn't let Amber play at people's houses if you didn't know their family first.

A. That is correct.

Q. But whether they are civilian or military, once you got to know them it would be fine if she played with them with the requisite degree of caution.

A. Right.

Q. You stated that this incident has had a profound effect on your family, but the effect would be the same would it if it were a civilian offender?

[57] A. Probably so.

Q. And the stress that you felt on your job would be the same if it were a civilian offender.

A. At least as bad.

Q. Especially if it were a civilian who you knew and trusted.

A. If it were somebody I knew an trusted it would be that more added effect on me.

Q. And Amber would need just the same counseling as if it were a civilian offender.

A. I suppose so.

Q. You stated on direct examination that you couldn't work with Petty Officer Solorio any more. Would you want to work with anyone who had been accused of a very serious crime?

A. It would depend on the crime.

Q. Say murder.

A. No.

Q. How about rape?

A. No.

Q. You stated on direct examination that you tend to trust Coast Guard people.

A. Yes.

Q. You trust Coast Guard people whether you know them or not?

A. Generally.

Q. Would you let Amber play at a Coast Guard family's house whether you knew that family or not?

A. Unsupervised?

Q. Unsupervised?

A. Probably not normally.

Q. You talked about two phone calls you received from Petty Officer Solorio, one was at work and that was business related.

A. Yes it was.

Q. And one was at home. Did Amber receive that phone call?

A. I am not sure who picked up the phone. I take that back, I believe it was my youngest daughter, Carrie.

Q. Amber never even spoke to Petty Officer Solorio.

A. Not at home.

[58] Q. Nothing was discussed about these incidents or any other incidents.

A. Not over the phone.

Q. The phone wouldn't seem unusual at all if you hadn't known about these incidents.

A. The fact that he said he called me because he subscribed to a new phone service to me didn't seem right.

Q. Would it have been unusual at all if there hadn't been these charges?

A. I still would have thought it was somewhat unusual. I don't call everybody because I got a new phone.

Q. Did you ever call Petty Officer Solorio from Oklahoma?

A. I believe I called him in New York after he arrived here to see how his trip went across country.

Q. Did you ever correspond with the Solorio's either by letters written by you or your wife?

A. My wife might have, I haven't.

DC: Thank you I have no further questions.

MJ: Redirect?

REDIRECT EXAMINATION

Questions by prosecution:

Q. How many floors were there in the office building of the Seventeenth District devoted to the Coast Guard operations?

A. Devoted to the Coast Guard? Nine, eight, seven. I believe there were four floors and a few odd offices on other floors.

Q. You have stated that you were friends with Petty Officer Solorio and you trusted him while you were in Alaska. Is it possible to divide up the various inputs to your trust between Coast Guard and non-Coast Guard neighbor and car pool—is it possible to divide it up and say how much was attributable to each way you knew Petty Officer Solorio?

DC: Objection, Your Honor, I believe he testified to that. He stated that he had very little social contact or very little contact with Petty Officer Solorio at work and the majority of his relationship was as a result of the neighborly relationship soccer, bowling, et cetera.

[59] MJ: I have heard the testimony. I will over rule the objection.

Q. Is it possible to divide it up?

A. I would say off hand no.

TC: Thank you.

MJ: No sir.

TC: Your Honor, there is one more question that I neglected on direct.

MJ: Go ahead.

Questions by the prosecution:

Q. Did you notice any change in Amber's personality while you were in Juneau, Alaska while Amber was going to school?

DC: Objection. This goes to the merits it does not go to the service connection issue.

TC: The dependents are quote, camp followers under *Relford* and if this had—if Amber's personality change, if she had any—had any impact on the family that is an impact of the offense.

DC: Your Honor, camp followers historically do not include dependents but was a term used for the merchants and women who followed along in the camp during the times of war.

MJ: I am familiar with Justice Douglas' phrases. I will over rule the objection. You may answer the question if you can.

A. I have to answer in the respect hind sight. All right, I did definitely see a change in Amber's attitude, her activities in school and her grades. They all declined rapidly.

Q. Did she under go any counseling while you were in Alaska?

A. No.

Q. Even in retrospect you can't say positively what the cause was, can you.

A. I have no way to prove it, no.

TC: That is all I have.

[60] RECROSS EXAMINATION

Questions by the defense:

Q. If you say that this is looking at this in hind sight then you really didn't notice these effects at the time did you?

A. They were noticeable but we were not aware of what may of caused them.

DC: No further questions.

The witness was duly warned and withdrew from the courtroom.

TC: Your Honor, at this point I would normally read the expected testimony of Amber Johnson in this bench matter. I would just refer Your Honor to that testimony and ask you to review it briefly and I will call the next witness.

The 39(a) Session recessed at 1455 hours, 3 June 1985.

The 39(a) Session was called to order at 1500 hours, 3 June 1985.

MJ: This Article 39(a) Session will come to order.

TC: Your honor, all parties who were present when the Article 39(a) Session last recessed are again present, no parties required to be present is absent. The government would call YN2 Frank Grantz.

Yeoman Second Class Frank Grantz, U.S. Coast Guard was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Please state your full name, your rank and rating, your present duty station and your service.

A. My name is Frank Grantz. I am a YN2 in the United States Coast Guard. I am currently stationed at Group Baltimore.

Q. Petty Officer Grantz, have you ever been assigned to the Seventeenth District?

A. Yes sir. I was assigned to Seventeenth District from July 10, 1980 to June 29, 1984.

[61] Q. Was that an accompanied tour or unaccompanied?

A. It was an accompanied tour.

Q. Who accompanied you on that tour?

A. My wife and my 13 year old daughter, Jennifer.

Q. Your wife's name?

A. Kathy.

Q. How old was Jennifer at the time approximately?

A. She was about 10.

Q. Where did you live in Juneau?

A. We purchased a mobile home in Glacier View trailer park. The address was 3555 Mendenhall Road, Space 84.

Q. The Judge has Appellate Exhibit VIII which contains a number of maps. One of them is of the Mendenhall area. If the location of your trailer is on one of those maps would you please indicate it to the Judge.

[Appellate Exhibit VIII was provided to the witness by the Military Judge.]

A. It was approximately right here, right across from Spruce Wood.

MJ: You have described an area within the block on the map as it is laid out in grids on the Mendenhall Valley map, Appellate Exhibit VIII. Second from the top row the second full block from the right hand edge of blocks near the left hand edge approximately a third of the way up in that area.

WITNESS: Yes sir.

Q. Did you know YN1 Richard Solorio while you were in the Seventeenth District?

A. Yes sir. I met YN1 Solorio shortly after I got there. We played basketball on the Seventeenth District team for a year. He helped my wife and I who ran the kids bowling league with that organization as treasurer of our bowling league.

Q. About how far did you live from Petty Officer Solorio?

A. About a mile or a mile and a half at the very most.

Q. How did Petty Officer Solorio happen to get involved in the bowling league?

A. He substituted and bowled on a league in town and I bowled on one of the leagues in town and I knew that he was a fairly good bowler. We had talked about it and when I took over the management of the league I asked him if he would like to help me coach and be the treasurer of the league so we would help the kids in town.

[62] Q. Did you ask him because you knew him in the Coast Guard or in part because you knew him in the Coast Guard?

A. Yes Sir. It was part Coast Guard and partly that I knew that he was a fairly good bowler and could probably help some of the kids that were in the league.

Q. How many people did you recruit to assist in this way?

A. It was myself and my wife, Petty Officer Solorio and two civilians.

Q. Did your daughter take part in any activities in which Petty Officer Solorio was involved?

A. My daughter was on the bowling league with us. She also played soccer for the Juneau Parks and Recreation League and YN1 Solorio was her coach for two years.

Q. Did you ever assist in coaching soccer?

A. A couple time when YN1 Solorio was working late or something. He would ask me if I would go and coach the team for him. He would give me a list of the players and what positions they played and asked me if I would -

Q. Where would he ask you this?

A. I would at work and we would do it on our lunch and then after work I would go home and change my clothes and then I would go over the soccer field that they were playing at and get ready for the game.

Q. Do you know why he asked you?

A. I assumed because I was his friend and we had done a lot of stuff together.

Q. And your daughter was on the soccer team?

A. And Jenny played for him. So, I always went when Jenny had a game and I didn't have a conflicting schedule I was always there. So, that's the reason I assume that he asked me if I would take over the team for him.

Q. Did Jenny ever go over and play at the Solorio house?

A. Yes she did.

Q. About how often?

A. Couple or three times a week for a while. Then she quit going over there.

Q. Can you put a approximate date when she stopped going over?

A. It was - let's see, we got up there in July of '80. The end of '81 the beginning of '82.

[63] Q. Did Jennifer ever see Petty Officer Solorio at work to your knowledge?

A. Yes sir she did.

Q. In what context?

A. The first year that we were up there my daughter went to Capitol School and after she would get done at school she would come down to the Federal Building and wait with me until after I got off work and then we would go home. In the course of her coming to my office she would stop and see YN1 Solorio and a couple of other people that she knew and say hi to them and then she would come up and wait until I got off work and then go home with my wife and I.

Q. Did you notice any change at all in Jenny's personality while she was up there in retrospect?

A. Jenny became very - she used to be outgoing and friendly and that changed. She didn't want to go anywhere and didn't want to do anything and she didn't want to be with anybody except herself. I didn't understand why because she had always been friendly and outgoing but that changed. She became very introverted, very quiet.

Q. Did she continue these sports activities?

A. Yes sir. That is about the only thing that she did, was play soccer and ball and other than that she didn't go anywhere or do anything with - she just wanted to be by herself.

Q. Did you take any action as a result of that to try to do something about it?

A. We asked her, my wife and I tried to talk to her and find out what was bothering her. She wouldn't tell us. After a time we got concerned and we took her to see a psychologist to see if Jenny would tell Doctor Greenold what the problem was and see if we could help her that way.

Q. When did Jennifer reveal to you what happened in Alaska with YN1 Solorio?

A. About two months ago we were called in for an interview by Special Agent Ferguson. I was contacted at work and he asked me to have my wife and daughter in his office at 1 o'clock the same day. It was at that time that I found out what was going on or what had happened while we were in Alaska.

Q. When did your daughter first tell you?

A. She didn't first tell me exactly what happened until we came up here for the Article 32 hearing in the beginning of April, I believe it was or the beginning of May.

Q. Can you describe your daughters reaction during that period of time between the interview with Special Agent Ferguson and the Article 32?

[64] She was very upset and very disturbing. She wouldn't talk to my wife or I and she just didn't want anything to do with anybody. She retreated into herself more than I had previously seen her do.

Q. Was there anyone else in the interview that Special Agent Ferguson conducted?

A. There was a Social Worker named Brenda Watson.

Q. Do you know where she is employed?

A. I believe she is employed at Headquarters.

Q. Can you describe the impact that your daughter's revelations have had on you?

A. Total shock, disbelief. I still have a hard time accepting what she told me. I didn't have any idea that Rich was this type of person. I considered Rich a very close friend and trusted him completely.

Q. Has this effected your performance of duty in any way?

A. Yes sir. I find myself having a very hard time concentrating on what I am doing. I am trying to sort through all the feelings that I have about what is happening to my daughter. She is most important in my life and it is becoming hard for me to deal with my job. Luckily for me the people I work for are very understanding. They realize that right now is a very difficult period for me. The job that I do is to the best of my ability and they realize that all this is happening at the same time and they realize that the work that I do is good work but it is not as good as I would like it because I can't devote all my concentration to it because I am trying to deal with my daughter.

Q. Is your daughter is undergoing counseling right now?

A. Yes she is. She is seeing a lady named Jeanette Rafferty once a week down at the Sex Crisis Abuse Center in Annapolis, Maryland.

Q. Are you or your wife undergoing counseling?

A. Yes sir we are. We have been set up with an appointment with Mrs. Rafferty's Supervisor at the same clinic every week.

Q. Are you paying for this out of your pocket?

A. No. The county is funding this. It is a - Anne Arundel County has a program that covers sex abuse treatment and it doesn't cost us anything.

Q. Have you spent any money in connection with counseling or examinations?

A. I have put out approximately \$300 for medical tests that were recommended by Jenny's counselor. I have submitted to [65] CHAMPUS but as of yet I have received no money back so everything I put out has come out of my own pocket so far.

Q. Do you think that this counseling is necessary for Jenny?

A. Yes I do.

Q. Do you think it is necessary for yourself?

A. Yes I do because I have a lot of feelings that I have to learn to deal with and I need to talk to somebody that is a professional. I can't do it by myself. I need to talk to a professional to get it straightened out.

Q. If the Coast Guard assigned you someplace where this kind of help would not be available what would your reaction be?

A. I would try everything that is within by legal rights to not go to wherever they were headed to transfer me.

Q. The counseling is very important to you right now?

A. Yes it is.

Q. Have you been told about how long this counseling might last?

A. Well, the estimate I was given by Miss Rafferty was six months to a year. I think that is an unrealistic time frame. With everything that I see happening to my daughter, I feel that it is going to be longer than that until she able to handle all of the feelings and be able to get at everything that has been buried for the last couple of three years.

Q. I know that you are not a psychiatrist or psychologist but can you describe in your own words how she appears to be dealing with this. What is her way of dealing with -

A. She is living in a fantasy world at the present moment. She comes out and deals with the fact of what is happening for a couple of hours at a time either when you telephone or when we take her to see Jeanette Rafferty she comes out and deals with it at that time and only for a very short period 'cause right now that is all she can do to deal with it.

Q. What is your method of dealing with the problems that you have testified to?

A. Right now I am working on releasing all the anger that I have. I have - I'm playing softball right now and I play a lot of racketball which enables me to release the anger that I feel. My way to get rid of it is by exertion and until the counselors that we are seeing can provide a better direction on how to release it this is my only way of getting rid of it right now.

Q. You described yourself and Petty Officer Solorio as very good friends in Alaska. Did that friendship extend until after you left Alaska?

[66] A. It did up until the time that I was made aware of what's been going on. Rich has called my house a couple or three times. I have talked to him at work. His wife has called our house and talked to my wife for a while and on one occasion he stopped by and visited us for a couple of hours because he had been in Portsmouth and he was headed back here to New York. He stopped in Baltimore for a couple of hours and visited on one occasion.

Q. Did he talk to Jenny?

A. Yes he did. He talked to Jenny on the phone on a couple of different occasions and when he stopped by our home.

Q. Was this before or after Jenny revealed what had happened?

A. This was before.

Q. Was Rich Solorio the kind of person that you would trust if you needed a favor, say you were going on PCS or TAD orders or you and your wife were going away and you needed somebody to watch the house, watch your kids. Is he somebody that you can rely on for a favor that involved trust?

A. At one time yes sir.

Q. When you need a favor like that is there one group of people that you would tend to go to more than others?

A. The people that I feel that I can trust are the ones that I would ask for something like this, yes sir.

Q. Do you tend to trust Coast Guard people when you run into a problem like this?

A. Yes I do.

Q. Would you trust Petty Officer Solorio in that way at this point?

A. I would not.

Q. Could you work with him?

A. No I could not.

Q. Can you give us some idea of the magnitude of this revelation on you. Does anything else happen to you in your life like this?

A. No sir.

Q. Is anything close?

A. The only thing that comes anywhere close is the 13 months that I spent in Viet Nam.

Q. And which has affected you more emotionally?

A. The incident with YN1 Solorio.

[67] Q. Where did you spend your time in Viet Nam?

A. I was with the Third Marine division on the DMZ.

Q. When?

A. 1969 to 1970.

Q. What kind of emotional residue do you have from that?

A. I feel that what I did was right by being there. I had trouble dealing with the way that we got kicked out or whatever way you want to put it and I feel that the guys that died over there and came back hurt and that it was a waste. At the time that was what I was trained to do and I felt it was right so I went and did it.

Q. Has this incident - the revaluations that Jenny had made to you effected you in the same way or in different ways as your Viet Nam experience?

A. Totally different. I don't know how to deal with this one. I learned to deal with the ones in Viet Nam. We are a very small service. I know a lot of people in the Coast Guard. This has made me leery of the people that I have worked with before. Will it ever happen again and it has made me quite leery of the people that I work with. The people that I trust. The people that I will let my daughter come in contact with.

TC: That is all I have.

MJ: You may cross-examine.

DC: Thank you Your Honor.

CROSS-EXAMINATION

Questions by the defense:

Q. The mobile home that you lived in in Glacier View trailer park?

A. Yes sir.

Q. That was privately owned?

A. Yes sir.

Q. When you were first contacted by Special Agent Ferguson in - when you first spoke to Ferguson and Brenda Watson. That was not at your initiation that was at Coast Guard initiation?

A. Yes sir it was.

Q. You say that you have lost trust in the people that you have worked with. Haven't you lost trust in all men?

A. No sir.

[68] Q. Just Coast Guard people?

A. The people that I work with.

Q. You work with Coast Guard people?

A. Yes I do. I also work with civilians.

Q. You have lost trust with civilian and military people?

A. No sir, I have lost trust with the people I work with.

Q. Have you lost trust with anybody with whom you work with now?

A. No sir.

Q. Would you be more cautious about letting Jenny stay at a civilians house?

A. Yes sir.

Q. Or at another Coastie's house?

A. Yes sir.

Q. Would you let Jenny stay at anybody's house that you didn't know?

A. No sir, I would not.

Q. Would you let Jenny stay at somebody's house even if that individual was a Coast Guard family, if you didn't know them?

A. No sir.

Q. The impact that this offense has had on you would be the same whether it was a civilian or a military perpetrator isn't it?

A. Yes sir.

Q. When you were in Alaska you were having marital problems weren't you?

A. Yes I was.

Q. Did that effect your performance at work at all?

A. No sir it didn't.

Q. Did you have to see a counselor in Alaska?

A. Yes sir I did.

Q. If your marital problems were in Alaska or here or wherever would you hesitate to go unrestricted transfer to a place that didn't have a counselor?

A. Yes sir I would.

Q. So the impact would be the same?

A. Yes sir.

[69] Q. You stated that you trusted Rich Solorio and you were very good friends at one point?

A. Yes sir.

Q. Now you are very hurt?

A. Yes sir I am.

Q. You would be just as hurt if it was another friend or an uncle or a cousin or it was another civilian you trusted?

A. Yes sir.

Q. The first time you met Petty Officer Solorio was at work?

A. Yes sir.

Q. Did you immediately become friends at work?

A. No sir I don't believe so.

Q. Were you involved with Petty Officer Solorio on a basketball team?

A. Yes sir we were.

Q. That was the city league?

A. Yes sir.

Q. You were involved in a bowling league and that was also a city league?

A. Yes sir.

Q. You were involved to some extent in the soccer league. You were the assistant coach if you were asked?

A. Yes sir.

Q. Were you involved with softball or baseball or other leagues?

A. The District had a softball team the one year that I was there and then I played on a civilian team the other two years I was there.

Q. Did Petty Officer Solorio play with you at that point?

A. I don't remember if Rich was on the District's team or not.

Q. If you only knew Petty Officer Solorio at work and your daughter wasn't the same age as Petty Officer Solorio's son do you think that you would have become as good friends?

A. I don't know.

Q. Did your wife work the entire time you were in Juneau, Alaska?

A. We got there in July and she started to work in either September or October.

[70] Q. Did she work until you left?

A. Yes.

Q. Who did she work for?

A. She worked for the Forest Service in the Federal Building.

Q. Did Petty Officer's Solorio's wife also work for the Forest Service?

A. Yes she did.

Q. Did you wife and Mrs. Solorio become friends?

A. Yes they did.

Q. Would consider that your wives were, that you played together, that you bowled, and your children were involved in these bowling and soccer leagues, that was a significant portion of your friendship?

A. Yes sir it was.

Q. How long have you been in the Coast Guard?

A. March of next year will be 10 years.

Q. And before that you were in the Marines?

A. I was out of the service for five years before that.

Q. How long were you in the Marines.

A. 2 years.

Q. So, you have approximately 12 years military service?

A. Yes sir.

Q. You are proud to wear the Coast Guard uniform?

A. Yes I am.

Q. Are you still proud to wear the Coast Guard uniform?

A. Yes I am.

Q. You stated that your daughter Jenny would come to work in 1980 when she was going to Capitol School. Was Capital School a Catholic School?

A. No sir it was a public school but it was located in the city of Juneau about two blocks from the Capitol and the Governor's mansion itself.

Q. Jenny came to work to get a ride home from you, is that correct?

A. Yes sir.

[71] Q. Did you ever come to work at Petty Officer Solorio's invitation?

A. Not to my knowledge.

Q. Your daughter was counseled for a time in Alaska. Do you recall stating that that was not related to any of these matters?

A. Yes sir.

Q. That is still your understanding?

A. Yes it is.

Q. You also stated that the people that you work for are very understanding of your personal situation?

A. Yes sir they are.

Q. Does that up lift your morale?

A. Yes it does.

Q. It's good to have a support in that group?

A. Support from the people that I work for is important and I put out an effort and they understand it and they support what I am doing and they also understand that this a very trying time and they have done everything that can to help me get through his period of my life.

Q. This is a point of clarification, Jeanette Rafferty is currently involved in counseling Jennifer.

A. Yes sir.

Q. And Jeanette is a civilian?

A. Yes she is.

Q. Jenny was involved in bowling from very early in your time in Alaska?

A. The first year that we took it over which was the October of 1981.

DC: No further questions.

MJ: Redirect?

TC: No redirect Your Honor.

The witness was duly warned and withdrew from the courtroom.

The Article 39(a) session recessed at 1455 hours, 3 June 1985.

The Article 39(a) session was called to order at 1500 hours, 3 June 1985.

[72] MJ: This Article 39(a) session will come to order. Please be seated.

TC: Your honor, all parties who were present when the Article 39(a) Session recessed are again present, no party required to be present is absent. Doctor Frank Caprio is on the stand. Doctor Caprio will you rise and I will swear you in.

Captain Frank Caprio, U.S. Public Health Service, was called as a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Will you state for the record your full name, your rank, your present duty station and your organization and service.

A. My name is Captain Frank Caprio and I am the Senior Medical Officer at the Support Center Governors Island Dispensary. I am also the Third Coast Guard District Medical Advisor. I am also the Chief of Neuro Psychiatry at the Dispensary.

Q. You are in the Public Health Service attached to the Coast Guard?

A. Yes I am.

Q. Doctor Caprio I would like to ask you some questions dealing with both the Family Advocacy program and the range of impacts that might be experienced on children from incidents of child abuse and on the parents of those children. Could you list for the court your professional background. The professional degrees you hold and some of the experience you have particularly in relation to this field that I am going to be asking question about?

A. The subject of child abuse covers many many areas.

Q. First of all, your professional qualifications?

A. I am a physician. I graduated from medical school. I did an internship in the Public Health Service and took part of my psychiatric residency training within the Public Health Service at the Public Health Service Hospital Lexington, Kentucky and at University of Cincinnati and Louisville University of Kentucky and at John Hopkins Hospital and at Shephard and Pratt Hospital in Baltimore, Maryland.

Q. Do you hold any other professional degrees?

A. I received my Medical Degree from Albany Medical School.

[73] Q. Do you have a LLB?

A. No. I went to law school but I don't practice law.

Q. What professional education and training have you had in relation to sex crimes or psychiatry as it relates to sex crimes?

A. I have been practicing psychiatry for the last 25 years. I first became interested in the so called sex offenders at a state hospital in New Jersey many years ago. In fact, New Jersey was one of the first states to have a treatment program at Malboro State Hospital over in Malboro, New Jersey. Ever since then I have been interested in the area of paraphilias or sex deviations and in private practice in Washington, DC and in Baltimore, Maryland I saw many such patients. They were referred to me either from the courts by attorneys or school officials or other physicians and I treated many such patients and I served as an expert witness in many cases involving paraphilias.

Q. Does defense counsel have an objection to Doctor Caprio being qualified as a expert witness in these limited fields that I have outlined?

A. No Your Honor the defense counsel does not object.

MJ: Let me ask you, do you have a CV or other summary of—just for records purposes?

WITNESS: Yes I do Your Honor. I don't have one with me but I think Lieutenant Commander Couper does or if not I can obtain one.

TC: Shall mark this an exhibit, Your Honor?

REPORTER: It is Appellate Exhibit XI.

MJ: Appellate Exhibit XI is accepted and I will accept Captain's Caprio's qualifications to testify as an expert witness.

Q. Doctor Caprio, are you involved at all in the Family Advocacy Program in the Coast Guard?

A. Yes I am.

Q. In what capacity?

A. In two ways actually, as the Chief of the Neuro-Psychiatric Branch here and also as the Senior Medical Officer at the Dispensary. I am often asked to evaluate active members and dependents that are involved in problems of family abuse that are referred to the Family Advocacy Program. I mainly do psychiatric evaluations and I still do some counseling.

Q. Have you been involved in a policy making role in the Family Advocacy Program?

[74] A. Yes I have. As a matter of fact approximately ten years ago I was the Coast Guard's representative to a what we referred to as a tri-service, actually it included the Coast Guard too, Family Advocacy Program and we formulated policies that created the Family Advocacy Program for the United States Coast Guard.

Q. Can you briefly summarize the service the policy that underlies present Family Advocacy Program?

DC: Objection. Your Honor, again we are getting into the policy. The question is fact. We have had questions dealing with moral or reputation. Policy doesn't impact what the effect is. Policy is simply policy. It should not be used to show the offenses are service connected.

MJ: I will over rule the objection subject to the same considerations in previous rulings that the policy that exists may be considered in the context of the existing service policy.

DC: I take that ruling to mean that you are not considering that the policy dictates the impact?

MJ: I am not going to rule in advance on evidence that I haven't heard.

Q. Doctor Caprio, can you tell us briefly if you know the underlying policy that is behind the Coast Guard's Family Advocacy Program?

A. Yes. Basically, the policies were all generated to create a--what we would refer to as a therapeutic environment for both active duty members and their dependents, also for retirees. But it mainly concerns active duty members and their dependents. It includes a whole host of problems usually psychopathology. Child abuse which includes actual physical abuse, sexual abuse, neglect and it includes also in addition to the child abuse spouse abuse. And basically that was the reason that we created the Family Advocacy Program to handle these major intra-family problems. We have developed therapeutic intervention programs all governed by policies to intervene when we find out about such problems. The military basically follows civil policies in the area of Family Advocacy. Many communities have similar programs.

Q. What impact do these therapeutic intervention programs and Family Advocacy Programs in general have on the active duty member in the family?

A. It varies, depending upon the active duty member's involvement. If the active duty member is the one that doing the abuse, either spouse abuse or child abuse, then by intervening we hope to correct this so that the member will desist. Sometimes it involves actually discharging the member from the Coast Guard. If it doesn't involve the active member but a dependent, then we [75] often have the active member involved in the therapeutic process. Usually if it is the father, husband, then we usually bring in the wife also. So, in one way or another, usually impacts on the active duty member.

Q. When a situation of child abuse from an outside of the family source is encountered, that perpetrators outside the family, is that kind of situation any greater or a lesser problem in the military then it is in civilian community or a problem with a different quality?

A. Do you mean if the father is not the perpetrator?

Q. If a source outside the family is the perpetrator?

A. If the father is the perpetrator as you can expect it creates dissension usually between the father of the child and the mother of the child. They are usually husband and wife. It is possible that they may not be husband and wife but usually

that is the case and it creates a lot of dissension. If the perpetrator is outside of the immediate family constellation then that is an entirely a different situation. There, often times it doesn't create such dissension, unless the perpetrator is an ancillary family member, an aunt or a uncle, a sibling, a grandparent, then it can create a lot of family strife.

Q. Briefly, what are the range of emotional and physical impacts if any, on a eight to eleven year old female child who is sexually abused by someone outside the family?

A. Most often the parents never learn of this. We suspect this. It is hard to come up with absolute figures but most cases of child sexual abuse are not discovered by the parents. The child never divulges this. The child may tell a peer, a friend, a counselor, a minister, a therapist later on that they were involved in prepubertal sexual abuse, but they never tell the parents. So, in most cases it has no effect on the parent because the parent doesn't know. The parent is kept ignorant and naive but, if the child divulges what happened to the parent usually the parent becomes very emotionally upset, angry, incensed. They don't really know what the child thinks and feels. In fact, often cases, the parent becomes more upset than the child. The child is living through a whole host of new life experiences and this may be another one. Most cases of child sexual abuse do not involve intercourse. They involve touching, rubbing, caressing, looking, but they do not involve intercourse.

Q. If I can return once again, just for a brief list of those types of emotional and physical symptoms in an eight to eleven year old child who was sexually abused, and then we can go into the impacts on the parents but for right now the impacts on the child. What are the range of different types of impacts?

A. Usually the child—most children that are sexually abused are in the age of eight to ten. They are prepubertal. They can [76] be younger, they can be older, but statistically as far as we know most of these children are in the age of eight to ten. They have some concept of what's going on but not a full understanding. If it involves heterosexual girls, in

other words the abuser is a male—an older male, ten years by definition—we refer to it as some one who is ten years older. And there can be homosexual or heterosexual abuse.

If I can cover heterosexual abuse first. These girls are young they have not reached menarche yet. They are not having menstrual periods. As a result, some of them are very sexually naive. No one has explained menarche to them, reproduction. They have some sense of what's right and what's wrong but it is not in the context of an adult of sex. Most of them are very naive sexually but they have some idea that this is wrong or that they should not be doing this. Many of them are very curious though. In fact, it is the first time they have seen a male nude body. If the male, if the abuser, the perpetrator is nude. Often times they are not. So, part of it is curiosity. That is one of the emotional feelings. Part of it is an immediate sense of wrong doing or guilt later. There may be some contriteness over what they did.

Then usually the perpetrator or the abuser tries to ensure confidentiality and there may be a threat of violence. That sometime happens. That if the girl divulges the information that the perpetrator will then inflict some kind of harm, embarrass her or even hurt her. That's a threat. Very few perpetrator's engage in violence statistically that we also know. There may be the threat of violence but usually there is no violence. What happens is, if the little girl tells a peer and the peer tells someone else and it eventually gets back to the parents, the parents usually react in a very emotional way. They become very upset and it's this reaction that the child witnesses and then the child realizes, "Wow, this is an unusual thing. This must be a very bad thing that happened because look at what mommy and daddy are doing." A child learns through witnessing this reaction—the discovery that this is a very bad thing. Those are usually the emotional responses. Now, if there is a threat of violence then there is also intimidation and fear. Those are other responses that the child can be plagued with.

Q. What are the social symptoms that a female child displays after the situation and whether it has been divulged or not?

A. It depends on the situation and who the perpetrator is. If it is grandfather—

Q. Outside the family?

A. Outside the family?

Q. Yes.

[77] A. Oh, If it is outside the family, once again, it depends on who the abuser was and what he acted like because there may not be any overt signs or symptoms that this happened. If the child is emotionally upset they may then display concordant emotional feelings; fear, often sometimes withdrawal. There may be panicky fear. There may be problems of a deteriorating school work. The child may seem preoccupied, nervous. They may experience, insomnia but these are all non-specific changes. As I say, in many cases there just are no signs and symptoms depending upon what the relationship of the abuser was and the way he acted with the child.

Q. Would you expect to find personality changes in the situation like I have described?

A. Not true personality changes but changes in behavior are usually what we see. Personality changes are usually something that happens after adolescence but we can see changes in a child's behavior, their demeanor, their normal way of relating to people.

DC: Your Honor, I am going to object to this entire line of questioning at this point. This seems to be going far afield of the service connection issue. It is going to affect in the child and the personality changes et cetera. Whether that effect is service connected or not is something not related to this portion of this testimony.

MJ: Do you intend to wrap this—

TC: I am going to move on Your Honor.

MJ: Well tie it together is what I am looking for. Your objection is well stated and counsel should be sensitive in that regard.

Q. Doctor Caprio, on the emotional impacts on the parent of the abused child, could you list the various types of emotional and physical reactions that you have clinically seen in parents that are going through this?

A. Yes. Usually, since the parents were not there they don't really know what happened and they'll ask the daughter or the son, sometimes it's the son with an older woman or more commonly with an older male homosexual perpetrator but the parents weren't there and as a result they really don't know what happened. Some of them are too embarrassed to ask their children. So, it's just left in the realm of the unknown. They never will know but oftentimes the parents will find out generally what happened and they will be very upset, very angry. In fact, a lot of parents become very very emotionally upset, very, very angry. They would just as soon have the perpetrator incarcerated, removed from society. Some feel that the person [78] should be given the death sentence and all sorts of things. They worry about—they are not only apprehensive and anxious but they are worried about the future, the unknown, what effect will this have on their child in future years. Will they be normal, will this have an irrevocable detrimental effect on the child. So, a lot of it is just the unknown.

Q. From your clinical experience, can you compare the magnitude of the emotional reaction of the parents and children with any degree of reliability?

A. In fact, parents have said to me, "I wish this had happened to me instead." Sometimes the parents will say to me, "It is so bad, what happened, that I wish I were dead. I could accept my own funeral better than having to go to a funeral and seeing my child in the casket. That I could not cope with." They do but they feel they couldn't, unless a parent is forced to go through that situation. They just can't imagine or comprehend how they could ever deal with some odious or heinous situation like that.

Q. What type treatment is available both for the parent and for the child in general?

A. For the child we have a whole host of treatment modalities, all the way from counseling, individual and group psycho-therapy and spiritual counseling. There are a lot of different treatment modalities. Now unfortunately, statistically most children never become involved in treat-

ment. If this happens, then that is it. There is no treatment made available to the child or the parents. Perhaps some counseling but no long term therapy.

Q. Are there cases where treatment is absolutely indicated?

A. In most cases treatment is indicated but whether it is available and whether the family wants to pursue this, that's another matter.

Q. Are the resources for treatment available at all Coast Guard Stations?

A. No. Not at all Coast Guard Stations. The large Coast Guard bases, yes, such as Governors Island, Cape May, the Academy, Kodiak, Alameda. But in most, the Coast Guard does not provide the treatment directly, but they can refer out to different agencies, Most Coast Guard personnel or Army, Navy, and Air Force do have resources available even though they may not be offered by the service itself.

Q. As a medical officer if you had a family who was undergoing counseling for—the dependent daughter had been sexually abused by someone outside the family and you believed that counseling was necessary, would the military member be [79] available for unrestricted duty at any Coast Guard station that the Coast Guard might send him to.

A. Well it could—It often times makes it difficult. If we have initiated counseling then we would like to pursue this for some period of time. So, that we would make a request that the active duty member not be transferred until we felt that the therapeutic and intervention had reached a certain point in stage with a resolution of conflict; but then, after that, we would lift the recommendation so that the member would be designated for unrestricted assignment.

Q. So there would be a period of time where a member would not be available for unrestricted transfer?

A. We would make that recommendation, right.

TC: That's all I have.

MJ: Cross-examination?

DC: Thank you Your Honor.

CROSS-EXAMINATION

Questions by the defense:

Q. During that period of time where you would make that recommendation. Have you ever had an instance where the recommendation was denied?

A. I don't recall off-hand where it was denied.

Q. Assuming that the member was transferred, if there wasn't Coast Guard facilities available, there would more than likely be facility in the community?

A. Yes that is right. These facilities, for the family, not the abuser. In fact, it is a lot easier do therapy for the family then it is for the abuser.

Q. Doctor did you have an opportunity to interview Petty Officer Solorio?

A. Yes I did.

Q. At that interview—well, what is a pedophilliac?

A. In the classification of psychosexual disorders there are four main categories. Gender, identity, paraphilias, sexual disfunction and a fourth category involving ego—dystonic homosexuality. A pedophil—pedophilliac disorder falls under the second category; a paraphilia which used to be called sexual deviations and now we call them paraphilias. Para, meaning a deviation, and philia referring to an attraction. So this is a sexual deviation under the paraphilias. There are several main behavioral disorders. Pedophilia, feticism, transvestism, [80] sadism, masochism, voyerism and exhibitionism. So it falls in that category. Basically is a sexual deviant or a paraphilic who is attracted to prepubertal children.

Q. Are all sex abusers pedophiles?

A. No. As I just mentioned there are all types of sexual abusers and sexual deviants but a pedophile is one by definition and this is an arbitrary definition but its borne out by clinical experience—that usually the pedophile is either a homosexual or a heterosexual and is ten years older than the prepubertal girl or if it involves a male homosexual the boy is about the age. Although in homosexuality in pedophilic homosexuality is not necessarily restricted to eight or ten. Now what happens in the psycho-sexual disorder involves psychodynamics where the pedophile is sexually aroused by a child, not the usual heterosexual attraction to an adult. They could be even an adolescent, but they are sexually aroused by a young girl who usually very sexually naive at that age.

Q. Doctor are all sex offenders by definition sexual deviants or do you have to be a deviant to be a child sex offender?

A. No. In fact a rapist is not considered a sexual deviant. They may rape a young girl—that's for anti-social act so to specifically answer your question. No, they don't have to be.

Q. When you interviewed Petty Officer Solorio could you determine whether he had pedophilic tendencies?

A. No I couldn't. In fact he denied that he was sexually involved with these young girls.

Q. Getting to the Family Advocacy Program, as far as impacts, the Family Advocacy Program as I understand it is designed to respond to various impacts, is that correct?

A. And to act prophylactically to prevent family abuse.

Q. But the program itself doesn't have an adverse impact?

A. No.

Q. In fact it lessens the impact on the Coast Guard active member of a family from a sex offense?

A. Hopefully.

Q. You talked for a bit about the effects upon a parent when their child is sexually molested. We intimated that the parent is a victim too. Isn't it true that a parent is a victim whenever a child suffers from disease or any particular accident?

A. Yes that's often the case. The parent can emphasize with the child and that is very true.

[81] For example, if the child was suffering from cancer, terminal cancer or let's say non-terminal cancer would that cancer have an impact on the parent.

A. Yes it would.

Q. If a child was involved in a car accident and the parent witnesses the car accident again, would the parent be considered a victim in that sense.

A. Not necessarily a victim but they would feel for the child there would be usually be a great empathy. Particularly if the accident was caused someone outside the family. If it was caused by a family member it might be a different feeling. If it was caused someone outside the family, the family would usually be angry with them usually, mad at them for doing this to their child.

Q. A similar type of anger that a parent of a sexual child abused might be—different context but similar extent to the anger?

A. No, because most parents could understand an accident. They can't understand the thinking though of a sexual deviant. To them it's a very abnormal and they can't empathize at all. If the parents would never do anything like that they couldn't imagine how come somebody else. They could imagine, on the other hand perhaps causing an accident, so, it is different.

Q. As far as the impacts on the parents with regards to a car accident. Is it a stronger on the parent to witness the accident or just to see the effects after the accident has happened.

A. Usually if they witness the accident it has a stronger emotional impact and there is a remembrance, the imagery.

Q. Accompanied by anger?

A. Yes.

Q. The difference between the pain that the parent feels from a child involved in a car accident for instance or a child involved in sexual abuse; is there anxiety and the uncertainty about the future? Is that a correct characterization?

A. That may not be in all cases. They may accept the accident as truly an accident. The other driver or whatever didn't intentionally do this and they may accept it as an accident. If the driver were on drugs or were intoxicated there may be less acceptance. The parent may feel that the person had some voluntary component in this. Where as in the case of the sexual offender, the act was only committed but the parent may feel that the perpetrator suffered some kind of psychiatric disorder and they don't understand it. They just can't comprehend why someone would do that. Why they would be interested in doing something like that. So, there is the unknown. Of it the perpetrator were psychotic, that is even a [82] more classical example. If the perpetrator shot a family member and it turned out that the perpetrator were psychotic, they wouldn't understand that at all.

Q. And the pain that the parent feels, car accident or cancer or child abuse, substantial in all cases?

A. The pain – what they experience. The discomfort. The unpleasant emotion feeling. The feeling may be the same even though the etiology of it may be different.

DC: Thank you doctor.

TC: No redirect, Your Honor.

EXAMINATION BY THE COURT

Questions by the military judge:

Q. Doctor let me follow up on that very last point that you were just talking about and ask – take it out of a parent context. My concern is more with the trial process where we have non-parent adult individuals who come to know of events, hear evidence, jury members if you will. Is the same reaction that you described for parents, as far as this lack of understanding and this feeling that the perpetrator may interpret from some kind of a psychotic disorder, also a tendency in this more detached relationship. Is this a common assumption?

A. Yes. There may not be much empathy because it wasn't their child, although the individual, whether they are a member of the jury, a policeman, a therapist, may have some empathy. It's not their family member but it is still very perplexing for such an individual to comprehend what's going on in the individual's mind. In fact it may go beyond just whatever did happen and they may think, "My gosh, this person is capable of doing all sorts of things, they don't think right. What else is the person going up with or do." That is what often they think or they may empathize "Gee, I wouldn't that to happen to my daughter or son," and they may feel that way.

MJ: Counsel, I point out that my question probably goes to the second motion that isn't before me now yet. I am just shorting cutting, if you will. It is subject to objection like all questions are – this line of questioning, but if we get to that second motion I think this is relevant.

TC: Yes Your Honor. I have one question in that connection too.

Q. Let me – I think you may have answered it. I'll just ask again. The desire to understand the mental process of an alleged perpetrator, is that a normal or natural reaction from this detached person who comes to have knowledge?

[83] A. It usually is very normal, I can tell you that Your Honor. So many people have asked me why do these people do that. Is is very, very normal to be inquisitive as to what make this person think and then do what they do, whether they are a pedophiliac or zoophilliac or carprophiliac or whatever, is right. There is a natural curiosity.

Q. Is there a tendency to classify it just as you just did?

A. No, because the average person doesn't know much about psycho-sexual disorders.

Q. Even in the average person's mind, is there a tendency to classify?

A. Yes in the sense that they, the perpetrator may be involved in say pedophilia but the average person, because they don't understand what makes a pedophilic think and behave the way they do, they wonder what else will this person do unusual or abnormal, that's right. They don't realize that the pedophiliac usually – that's the only unusual thing that they do, it's just restricted to that and they don't realize that the pedophiliac is not psychotic either. In fact the pedophiliac is usually married and has a family.

MJ: You may continue. Thank you.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Doctor Caprio, I believe that you testified with respect to pedophilia that that is an attraction to prepubertal children?

A. Right.

Q. Does that attraction tend to remain the same over the course of say a year or two or can it change either due to therapy or behavior changes or any other outside influence?

A. Almost by definition pedophilia is usually is a chronic condition. It's even more so if it involves homosexual pedophiliacs. Mainly, an adult male with a young boy. In the case of heterosexual, where the victim is a young girl and the male perpetrator is at least ten years older; that is less

chronic than the homosexual pedophilia situation, but they all are amenable to therapy. Now, whether the therapy is successful or not that is a different story. In fact, usually if the behavior is—it can be modified—it can be—the actual behavior of but the actual intrapsychic thinking doesn't usually change. If the person is a pedophiliac, almost by definition, they're are going to stay that way. There will always be a sexual attraction toward children. What they do about it is a different story. In fact, if there is discovery of this and a lot of adverse publicity—if there is legal involvement, then the individual may [84] refrain but you have to remember a lot of pedophilia goes on without any complaints. A lot of adults are into pedophilia and they have consenting children. In fact, this has become quite vogue in recent decades. That is pedophilia, but that is a different kind of pedophilia.

Q. For the pedophile, then behavior can change for any number of reasons, but the love object remains the same or the love—

A. The love object remains essentially the same. That is right.

MJ: Recross.

CROSS-EXAMINATION

Questions by the defense:

Q. Doctor the love object remains the same. That is only assuming that the individual is a pedophiliac?

A. That is right.

Q. If he was or she was just a sex offender without pedophiliac tendencies, there is usually no love object as far as young girls—

A. Usually there is a love object. There may not be a little girl. It may a adult girl but an adult girl is not available. So the individual will turn to a young girl and because an adult consenting women is not available, and the individual may have a sexual involvement with the child and it looks like that is an incidence of pedophilia but really it isn't, in that the adult is not a pedophilic.

Q. Assuming whether or not you have a sure pedophiliac, if an individual is accused of a number of crimes involving young girls, is it more likely for a jury to believe that he would be involved in other crimes?

A. It depends on the knowledge of the jury or the whole area of psycho-sexual disorders and what they are told if they haven't done much reading, it would in large measure be probably what they are told while they are hearing the case.

Q. Assuming an individual was accused of committing various crimes against young girls but charged with other crimes. At that point would it be more likely for a court or jury to believe that he actually committed the crimes charges based on the fact that there was evidence show—

A. Unless the jury were educated to the contrary, I think that that would probably be the case.

DC: No futher questions.

[85] TC: No further questions.

The witness was duly warned and withdrew from the courtroom.

TC: Your Honor I neglected to ask you to review the stipulation of expected testimony of Jennifer Ann Grantz so I assume that you may have done that in any case?

DC: Your Honor I also neglected to hand you a copy of the proposed findings of fact.

MJ: Those I have received from the government—received from the defense although the government if they haven't been should be also marked as an Appellate Exhibit. The proposed finding of fact should marked as Appellate Exhibits in order, the government's first then the defense's. I notice that the copy of the government's is marked "Proposed Special Finding". What I am looking for here and what I thought I covered in the order was essential findings of fact under the RCM to make findings on the motions, particularly this motion on jurisdiction which are a little bit different than special findings.

TC: Yes your honor.

MJ: So even though you call them special findings you prepared them as essential findings of fact?

TC: That is correct, they were all directed towards this motion.

MJ: Where are we on this motion? Anything else?

TC: Your honor, a Special Agent will testify briefly, I hope, to the division of effort between Coast Guard investigators and Alaskan investigators and I have one other potential witness but I would like to speak to him very briefly, perhaps I can do without him. That would conclude the government's case -

MJ: You have two more witnesses on the motion?

TC: Yes your honor.

DC: I have two witnesses your honor on the motion.

MJ: It is four thirty, what is counsel's desire on the length of the day, obviously it doesn't appear we are going to finish the motion today.

TC: I don't know how long the defense witnesses are but I believe the government witnesses will take five minutes on my part each.

[86] DC: Your honor, I think we can continue.

MJ: For anticipated witness, let's proceed with the short government witnesses and pick it up in the morning.

DC: In that case I would like to tell my witness to go home, she has a sick child.

REPORTER: Your honor, the defense proposed finding of fact is marked as Appellate Exhibit XII and the government's proposed findings are marked as Appellate Exhibit XIII.

MJ: Let's take a short recess in place, carry on.

The Article 39(a) Session was recessed at 1635 hours, 3 June 1985.

The Article 39(a) Session was called to order at 1637 hours, 3 June 1985.

TC: Your honor all persons who were present when the 39(a) Session recessed are again present, no person required to be present is absent.

Special Agent Gary Smith, U.S. Coast Guard, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. State for the record your full name, your military affiliation and present duty station.

A. My name is Gary Smith, military affiliation is the United States Coast Guard, my present assignment is Commander, Third Coast District office of intelligence and law enforcement.

Q. Special Agent Smith what position have you occupied in the investigation of the charges of child molestation against Richard Solorio?

A. I am the control agent.

Q. What is your job as control agent?

A. Managing the investigation of the charges.

Q. In connection with the charges against Richard Solorio has the investigation been broadened at all beyond just Coast Guard dependent victims.

A. Yes sir.

[87] Q. Have Coast Guard agents interviewed the Coast Guard dependent victims?

A. Yes sir, they have.

Q. Would you normally receive reports, in the course of your job as control agent, if a state happened to interview Coast Guard witnesses or Coast Guard dependents?

A. Yes sir, I would.

Q. Have you received any reports that the State of Alaska has attempted to interview Amber Johnson, Jennifer Grantz or either of their military fathers?

A. No sir.

Q. Have you received any reports that the State of Alaska has interviewed witnesses?

A. Yes sir.

Q. What was the general nature of the reports that you received with regard to the activity of the State of Alaska?

A. The State of Alaska is, in conjunction with our office in Alaska, conducting investigations concerning civilian personnel and or dependents living in Alaska at present.

Q. Concerning civilian personnel?

A. Yes sir, living in Alaska at present.

Q. Have Coast Guard investigators interviewed any witnesses regarding potential or alleged victims of Petty Officer Solorio who are not Coast Guard dependents?

A. Yes sir, they have.

Q. What action have you taken as control agent when a lead is developed regarding a alleged victim of Petty Officer Solorio who is a civilian?

A. Notify my counter part in that district who notifies the local law enforcement, in Alaska they would notify Alaska Public Safety.

Q. Can you give any specific instances of when this particular procedure that you have just described, a lead concerning a civilian victim?

A. Yes sir, in searching for a, so far not further identified, young lady named Tanya we have looked for and a young lady named Heather.

Q. When leads are developed that involve civilian victims, what action have you taken to turn this over to the State of Alaska?

A. I don't understand the question.

[88] A. What action have you taken to turn these undeveloped lead over to the State of Alaska?

A. We notify the Alaska State Police.

Q. Have you received reports of them following up on undeveloped leads?

A. Yes sir I have.

Q. Do you have a specific example of that?

A. I am trying to think by name. Yes sir, they have interviewed a young lady by the name of Vinnie Tullos concerning any information she may have or alleged acts.

Q. Have there been any division of responsibility or division of effort between Coast Guard and Alaskan investigators in this case?

A. Yes sir.

Q. What is that division?

A. The Coast Guard is handling the military dependents, the military people and the Alaskan State Police are interviewing the civilians.

TC: That is all I have.

CROSS-EXAMINATION

Questions by the defense:

Q. Has (oil) in either the Seventeenth district or the Third district, you being involved as control agent, turned over the reports of the offenses dealing with Amber Johnson and Jennifer Grantz to the State of Alaska?

A. Not to my knowledge sir.

Q. Have you provided the State of Alaska with any information dealing with those reported offenses?

A. No sir.

Q. Not your office?

A. No sir.

Q. Are you aware of any other offices that have?

A. Not to my knowledge.

Q. Alaska is continuing to interview possible civilian victims?

A. I don't understand the question sir.

Q. You said that Alaska has been interviewing an individual named Tanya or looking for an individual named Tanya and an individual named Heather.

[89] A. Yes sir.

Q. They are continuing that search for those persons?

A. Yes sir.

Q. That is obviously with an eye to prosecution, is it not?

A. I don't know sir.

Q. But your investigation does continue.

A. Yes sir.

TC: No further questions.

MJ: Is there redirect?

TC: No your honor.

The witness was duly warned and withdrew from the courtroom.

TC: Your honor I request a few moments to see if this last witness is really essential or if there is really anything to add.

MJ: The court will be in recess subject to call, carry on.

The Article 39(a) Session was recessed at 1645 hours, 3 June 1985.

The Article 39(a) Session was called to order at 1648 hours, 3 June 1985.

TC: Your honor all persons who were present when the 39(a) Session recessed are again present, no person required to be present is absent, there is no witness in the hearing room.

MJ: Is that all you have on the motion?

TC: Yes your honor, the government has no further evidence to present on this motion.

MJ: And you had something you wanted to present or mention on the matter that I deferred on the letter from Alaska.

TC: Yes your honor, in addition to the grounds asserted by the government previous which is basically the hearsay exception which I admit does require some disclosure but I had no indication from the defense that he was going to object in this way to the letter. The government would propose that the letter is a letter of a regularly conducted activity under Rule 803(6). The comments through Rule 803(6) indicate that exception 6 permits records of regularly conducted activity to be admitted as [90] an exception to the hearsay rule. The guarantee of reliability in the regularity of the record keeping in reliance of business, however, the military provisions is generally from the Federal Rule but the definition of business is expanded. A business entry is defined as "any memorandum, report or date compilation". I assert that what we have is a memorandum or a report concerning accidents, opinions or diagnosis. We have a decision and opinions or asserted rationale in that memorandum or report. From information transmitted by the person with the duty to the business and with the knowledge of the information. Prosecutors are in the business of making prosecutorial decisions. Sometimes they memorialize them, and I believe your honor could take judicial notice that in cases which involve both civilian and military law enforcement implications that it is common practice to memorialize a decision of a prosecutor to prosecute or not to prosecute and to inform the effected military command. The final element is that the information is recorded in the regular course of business. This is a regular activity, it is common practice to provide these reports to the military. The term memorandum is broadly construed so that according to these comments that virtually any document may satisfy its mandate. For instance, we know from *Strangstallein*, *Case*, and *Porter* that lab reports or forensic reports can be admitted without the testimony of a chemist. I believe *United States v. Power*, 12 MJ 129 Court of Military Appeals 1981 dealt with the receipt in evidence of report and that court indicated that indicated that judicial notice could be taken that a crime laboratory is a place in which scientific methods are

applies and the testing and analysis of various items in connection with the detection and prosecution of crimes. In the instant case it is not necessary to go that far with judicial notice, merely that is the business of the prosecutors to make prosecutorial decisions and very often those decisions are memorialized. We don't have an objection to the authenticity. It was the governments position that this is a record of a regularly conducted activity. There isn't any objection that the foundation is in essence can be provided by judicial notice in the same way that *Strangstallein* and *Porter* take judicial notice of the regular practice of labs. Your honor can take judicial notice of the regular practices of prosecutors in informing the military of their decisions to prosecute or not to prosecute and giving reasons why or not they have considered the way they have. That is all I have your honor.

MJ: Defense response.

DC: Yes your honor, the defense would first like to note that it is not the duty of the defense to inform the government of its grounds for objection. It is the job of the government to anticipate especially when it knows it is offering hearsay evidence. Secondly, if any of the 803 exceptions is applicable, 803(8) is a public record report not 803(6). It is certainly [91] more appropriate since a the record with the State of Alaska letter head appears on its face to be a public record, if it is a record of regularly conducted business at all. But under 803(8)(b) specifically excluded are matters observed by policies and other personnel acting in a law enforcement capacity. This is clearly a law enforcement capacity. This is not regularly conducted business it is a response to government's request, the defense believes, to defer prosecution. The defense contends that Alaska was encouraged to defer and in that it was a law enforcement decision it was made in a law enforcement capacity and that is specifically excluded by 803(8). As for my objection under the hearsay rule, I renew my objection that there are so much surplusage in this that it was irrelevant to the issue at hand and should not be admitted or considered with regard to this motion. I would further like to say that *Strangstallein* and *Porter* talk about laboratory reports and those are reports made in the regular

course of business, it is the regular course of the business to analysis and make a report. The regular course of the State of Alaska is not to respond to the Coast Guard advising them whether or not they will defer prosecution. It is a very rare occurrence indeed. Again, even if that was a regular course of business, it is excluded by 803(8).

TC: One brief response, as defense counsel indicated there is an exception for things observed by law enforcement officials we are not dealing with and observation of the State Attorney from Alaska, we are dealing with his recorded mental process. So we don't have a situation where facts extrinsic to a document are being offered for the truth of those facts. In which case there is a clear confrontation if we are offering mental process and recorded decision of the prosecutor and as I pointed out if your honor regards it on the residual hearsay rule there is a stipulation available that indicates defense counsel and prosecutor have contacted the same Louis Menendez and he indicates that if there is no jurisdiction he may reconsider. So there is adequate indication of reliability in that recorded thought process of Louis Menendez.

MJ: Again, I am not going to deal with any stipulation that is in the air. If counsel want to offer a stipulation that option is open, but I will not base any decision on any verbal agreement or representation of it. Are both counsel clear on that?

TC: Yes.

DC: Yes.

MJ: Other matters?

[92] DC: Your honor, the defense would request that if you do decide to admit the State of Alaska letter the defense has requested and the government has not complied with the defense's request to receive the letter which initiated this letter, the letter from Commander Couper to Attorney Menendez and any other correspondence that is in the possession of the government.

MJ: That doesn't go to its admissibility for the purpose of the motion.

DC: Not this, the letter's admissibility assuming that you decide to admit it the defense request that we have the opportunity at the very least to view the letter.

MJ: What does that go to then?

DC: The request.

MJ: What is the purpose of your request then to see the initiating letter?

DC: The purpose of seeing the initiating letter is to see where this letter came from and that request was made prior to the decision whether or not to admit this document.

MJ: For what purpose do you want see the initiating letter?

DC: The defense believes that it will indicate some of the intention and motive behind the State of Alaska's deciding to defer prosecution.

MJ: But what good will it do you then?

DC: I can't say for sure until I see the letter.

MJ: Why do you want to see it then and not now?

DC: I wanted to see it when I made the request. You had set a deadline of 28 May for the government to comply with discovery. That was when I requested it and was when I wanted to see it.

MJ: Do you feel that—lets clarify this for record purposes. Do you feel now that this government has not complied with legitimate discovery requests?

DC: Yes your honor, we do.

MJ: And what was—when did you request this letter?

[93] DC: Request for discovery was served on the government on 23 May 1985.

MJ: Is that request part of the record?

DC: No your honor, it is not.

MJ: Do you choose to make it part?

DC: Yes, the defense request that it be made part of the record.

[The defense's request for discovery was provided to the reported and marked as Appellate Exhibit XIV.]

MJ: This is the only outstanding matter on that request?

DC: Yes your honor.

MJ: Government position?

TC: The government's position is that that document is attorney work product. The government stands ready to turn it over to your honor to determine if that is the case. That it occupies the same status as legal research, discussions with witness and that it is not properly discoverable.

MJ: Do you have any authority? Either counsel.

DC: Your honor, the defense doesn't have any authority but contends that it is partial to the transaction that led to the letter from Alaska stating that they will defer prosecution. The defense contends that it is discoverable and should very possibly be made part of the record.

TC: Your honor, the government will rely on first of all the fact that Rule 7801 under document tangible, objects and reports that this particular document doesn't fall under any of the specific listings there and that under 701(f), information not subject to disclosure, nothing in this rule shall require the disclosure or production of notes memoranda or similar working papers prepared by counsel and counsel's assistants and representatives.

MJ: Is the government is willing to permit *in camera* examination for the purpose of whether or not I can admit for consideration on the motion?

TC: Yes your honor.

[94] MJ: I think I better with the understanding that I will bifurcate that process and consider it for the purpose in the first instance only and then only if I find that it is discoverable—then it still has not been offered for purposes of the motion so will not consider it for purposes of the motion at this time.

DC: Your honor, the defense would also note that it is under Rule 701(f) that is the description of work product and there is no question that work product is not discoverable, the issue is, is this work product? You have notes, memoranda, and working papers, that is kept within the control of the attorney who created those documents, but once those documents become part of the correspondence that leads to an official record, that leads to a document offered into evidence for consideration it loses that characteristic of work product and therefore should be discovered.

TC: Your honor, I will turn over this document 5813 dated April 26, 1985 for your *in camera* inspection.

[The military judge was provided with the government's above stated letter.]

MJ: This will not become part of the record at this time, it will become part of the record at a future time without regard to my ruling, but right now this is *in camera*.

DC: Your honor, one more point, as trial counsel just mentioned this is letter 5813, the fact that it has an SSIC number on its face would take it out of the work product mode and and put it into official document and put in in control of the government.

TC: I'll represent that it is not part of any public record in the government, it is part of this prosecutor's files, but not part of any public file.

MJ: Anything else?

DDC: No your honor.

The Article 39(a) Session was recessed at 1710 hours, 3 June 1985.

The Article 39(a) Session was called to order at 0830 hours, 4 June 1985.

[95] MJ: Good morning, please be seated. The Article 39(a) Session will come order.

TC: Your honor all persons who were present when the 39(a) Session recessed are again present, no present required to be present is absent, there is no witness or member present.

MJ: Defense ready to proceed?

DC: Your honor, before the defense proceeds, has your honor made a decision as to its request for discovery?

MJ: I have and I am going to deny your request and state that there has been no demonstration of a specific need; that the matter is not relevant to the guilt or innocence of the accused; or other wise admissible.

DC: Your honor, the question was not as guilt or innocence but sir only of relevance to the issue of service connection.

MJ: I, in saying other wise admissible, that was certainly considered.

DC: Your honor the defense would call YN1 Richard Solorio as its first witness on the jurisdictional motion.

TC: Your honor, there is procedural matter I'd like to bring up if I may. I do have an amendment to a convening order, I do not have copies so I'll show it to defense counsel.

[The defense counsel was provided the amendment to the convening order to examine and it was then given to the military judge.]

MJ: Where it says vice Chief Warrant Officer B. N. Hanks, trial counsel can you represent that convening authority's intention is to excuse Mr. Hanks?

TC: That is correct your honor.

MJ: I hand that amendment to the reporter for attachment to the convening order. Let me further state that with respect to your discovery matter, I did consider Military Rules of Evidence 502 and 506 as well as the other authorities cited on that point. Would the defense state that any limitations that apply to this testimony?

DC: Yes your honor, this testimony is solely related to the issue of jurisdiction. Petty Officer Solorio will be talking about his relationship with the family of YN2 Grantz and CWO Johnson and that testimony will be limited to that issue and [96] Petty Officer Solorio testifying in this portion does not waive his right to refuse to testify in any later point.

MJ: You may proceed.

The accused, Yeoman First Class Richard Solorio, U.S. Coast Guard, was called as a witness for the defense, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. State for the record your full name, rank and present duty station and your service.

A. I am YN1 Solorio with Group New York and I am with the United States Coast Guard.

TC: Your witness.

Questions by the defense:

Q. Petty Officer Solorio, are you familiar with CWO Larry Johnson and his family.

A. Yes I am.

Q. When did you first come in contact with Mr. Johnson or any member of his family including his wife or children?

A. I believe I became in contact with the Johnson's first with their kids coming next door to play with my kids. Then I saw Mr. Johnson outside his home and since we were respective neighbors I went over to introduce myself to him and found out he was in the Coast Guard. I believe that one of kids had mentioned to one of my kids that he was in the Coast Guard also.

Q. Did that relationship or friendship with Mr. Johnson and the family develop?

A. Yes it did.

Q. And what activities did you—in what manner did you socialize with the Johnson family, you and your family?

A. Well mostly it was contained in with our kids activities with youth soccer, bowling and they were relatively the same age as each other, Brian and Amber—

Q. Now just for the record, who is Brian?

A. Brian Solorio is my eldest son.

Q. How old is he?

A. At this time he is 12 years old.

[97] Q. Who is Emanuel Solorio?

A. Emanuel Solorio is my youngest son and he is 10 years old.

Q. And the Johnson children, what are their names?

A. Amber Johnson and Carrie Johnson.

Q. Who is the older, Amber or Carrie?

A. Amber is.

Q. Is Amber approximately the same age as Emanuel—Brian, excuse me.

A. Yes.

Q. And Carrie, is she approximately the same age as Emanuel?

A. Yes if not the same.

Q. So your children and the Johnson children became friends?

A. Yes.

TC: Your honor, this is direct testimony and I would object to the leading form of the questioning.

MJ: Overruled for the purpose of these lead in questions.

Q. Aside from the soccer and bowling, was there any other way in which your family socialized?

A. I was on the same bowling team that Mr. Johnson was. We were in a civilian sponsored league in down town Juneau and we were sponsored by the Pioneer people, they sell trailers.

Q. Were you acquainted or friendly with any other of your neighbors in your neighborhood?

A. Oh yes, very much. The immediate neighbors and with basketball and soccer and chess, I belonged to one of the local chess club that I help initiate first start.

Q. Were any of those people in the neighborhood civilians?

A. Almost all of them.

Q. And you were friendly with civilians as well as military people?

A. Well mostly civilians due to just your activities. The Coast Guard didn't have much for outside activities for their military personnel.

Q. Would you have become as friendly with Mr. Johnson and his family if he was not in the Coast Guard?

A. Yes.

Q. What is the basis of that statement?

[98] A. Well because we were next door neighbors and the kids were involved in the same activities and ninety nine percent of the time I ever saw Mr. Johnson was to do those activities and to be next door neighbors.

Q. Did you ever see Mr. Johnson at work?

A. From time to time, like he said we would pass each other in the hall ways and if his office had some dealing with my office for business related work.

Q. If you could assign a percentage or relative weight would your on base or off base contacts have been more significant with Mr. Johnson?

A. It would have to off base as friends and next door neighbors.

Q. How about YN2 Frank Grantz, did you know YN2 Frank Grantz and his family?

A. Yes I do.

Q. How did you become associated with YN2 Grantz?

A. Well we were on the same basketball team and -

Q. Who sponsored the basketball team?

A. The Coast Guard did.

Q. Who sponsored the basketball league?

A. The Juneau Douglas Parks and Recreations.

Q. In what way did the Coast Guard sponsor the basketball team?

A. We were able to get uniforms from them and that saved us a lot of money.

Q. Was there any other support the Coast Guard gave the team?

A. If we were to get involved in local tournaments around Christmas time there was fee for that to participate and we would put in request with Coast Guard morale and they would pay for that entry fee.

Q. After you became acquainted with YN2 Grantz in basketball, did you become acquainted with the family?

A. Yes I did through youth bowling.

Q. How did you become acquainted through youth bowling?

A. Well we went almost every Saturday between October and April for two or three years in a row and Frank would be there and my wife, she worked for the forest service and Frank's wife worked for the forest service and they knew each other from the forest service we would see each other every Saturday. Frank [99] asked me if I could help out with the youth bowling. We were good friends at the time.

Q. Would YN2 Grantz have asked you - in your opinion would YN2 Grantz have asked you to help out in youth bowling if your children had not participated?

TC: Your honor, I object, that calls for speculation as to YN2 Grantz's reason for asking.

MJ: Sustained.

Q. Did your children participate in youth bowling?

A. Yes they did.

Q. Did you attend youth bowling each week?

A. Yes I did.

Q. In what other ways did you associate yourself with Frank's family?

A. Frank called the Juneau Parks and Recreation to have his daughter placed on my soccer team.

Q. What kind of league was the soccer team?

A. It was a civilian sponsored or a city league sponsored.

Q. Were there military and civilian on your soccer team?

A. Yes, Jennifer Grantz and my son Brian.

Q. Were what?

A. They were Coast Guard dependents I guess.

Q. Were any other Coast Guard dependents on that team?

A. The may have been, I didn't make it a point to find out who was Coast Guard and who was civilian.

Q. Would you have become just as friendly with Frank Grantz and his family if he was a civilian?

A. Yes I would have.

Q. What do you base that opinion on?

A. Well, due to our outside activities with the youth bowling and soccer and basketball and our wives knew each other and we were very friendly with each other through the forest service and seeing each other every Saturday and we just didn't have that much participation with the Coast Guard. If the Coast Guard had more activities we may have had more togetherness in that respect.

Q. So what would you say is the basis of your friendship with Frank Grantz and his family?

[100] A. Due to our outside activities with the, I guess mostly with the kids.

Q. Did you now Jennifer Grantz, Frank Grantz's daughter?

A. Yes I did during that time.

Q. Did she have a relationship with any of your sons?

A. Yes, she was about the same age as my son Brian was and they played a lot together.

Q. In your opinion, the fact that the kids played a lot together, did that have an effect on your relationship with the Grantz family?

A. I am sure it did. It got us more closer together since we met more often and I am sure it did.

Q. Did you have any other civilian friends who participated in the soccer, bowling or other youth activities?

A. Yes I did.

Q. Would you consider those people as good friends as you consider YN2 Grantz?

A. Yes.

DC: No further questions.

CROSS-EXAMINATION

Questions by the prosecution:

Q. Petty Officer Solorio did you ever commute with, then YN1 and Yeoman Chief, Johnson to work?

A. There was a short period of time that we decided to start car pooling.

Q. Was there a reason for that other than just convenience?

A. It was initially for the convenience and the expense and then we made reference that it was also a good idea after my wife quit work because she was running a day care center there at the home and so was Mrs. Johnson. It wouldn't hurt to leave one of the cars there.

Q. When did your wife start that day care operation and leave the forest service?

A. I believe it was '82 December.

Q. So you car pooled after '82 December or did you car pool before then too?

A. Now that I think about it we initially started it by October '82 around that date and then it went on for about a month and a half. Very shortly after my wife started that day care we [101] decided that since I was working long hours to break off the car pool.

Q. Did you know that Amber Johnson was the daughter of an active duty Coast Guardsmen who was a Yeoman in the Seventeenth district?

A. Yes now I do, I mean -

Q. Did you not know that Amber Johnson was a daughter -

A. You mean when I first met her?

Q. During the time that you knew Amber Johnson?

A. Yes I do and she is Larry Johnson's daughter.

Q. Did you know Jennifer Grantz was the daughter of an active duty Coast Guardsmen who worked at the Seventeenth district office as a Yeoman?

A. I didn't look at it that way but it is a true statement.

Q. To your knowledge, did Amber Johnson know that you were in the Coast Guard?

A. She must have, I mean we were next door neighbors and kids say what does your father do.

Q. Do you recall Amber Johnson ever seeing you in uniform or at work?

A. She came in for an ID card towards the last portion of their stay there and I had my uniform on at work.

Q. To your knowledge, did Jennifer Grantz know that you were in the Coast Guard?

A. I am sure she did.

Q. Did Jennifer Grantz ever see you in uniform or at work?

A. I am sure she has seen me at work, I can not remember if I did her ID card or not.

Q. Do you recall Jennifer Grantz visiting you a number of times each week during 1980 and 1981?

A. No I do not.

Q. Was there any period of time when Jennifer Grantz would visit you at work?

A. I cannot remember any time although I did see her up in her father's office a couple of times when I had business dealings with Frank Grantz and I went up there to his office and his daughter would be waiting for him to take her home or something.

Q. Did you receive an allowance from the Coast Guard to defray the cost of housing in Juneau while you were in Juneau?

[102] A. At two points there was housing allowance and rent plus, yes I did.

Q. During the entire time you were in Juneau?

A. Yes I did.

Q. I believe that you stated on direct that you came to know Frank Grantz when you both participated on a Coast Guard sponsored basketball team, is that correct?

A. Yes I did.

Q. What year was that?

A. I believe it was all three years that we were - it had to be the '81, '82 season, '82, '83 season and I think the last year that we were there he didn't play basketball, his wife did not want him to play basketball.

Q. It was after you played basketball with Frank Grantz that you came to know Jennifer and the rest of the family?

A. Yes and with the youth bowling league, before that I just knew Frank.

Q. Do you recall where Petty Officer Frank Grantz was when he asked if you would like to volunteer to help out in the basketball league?

A. He had called me over to his house one day and we all sat down and talked about, me, his wife and himself. He also asked me if I wanted to be an officer of that league, treasurer and I said yes.

Q. Were Coast Guard personnel encouraged to participate in community activities such as you and Frank Grantz did?

A. Not that I am aware of. Being the YN1 in personnel for three and half years and through some of the meetings that would go on I understood that it was the chief's association and the officer's association were encouraged and from time to time they would participate in certain activities. The chief's association would participate in a spaghetti dinner each year for the elderly.

Q. You stated that the Coast Guard did not sponsor that many activities so that the Coast Guard people could get together, is that correct?

A. They didn't - even getting the money for the basketball team was rough. I guess as everybody is aware that the Coast Guard doesn't get that much money and if you were going to get in on outside activities in Alaska you had to formulate them yourself. I spent three tours in Alaska and I know what I am talking about.

[103] Q. So if your children want to participate in soccer or you want to participate in soccer there would be no Coast Guard league like there would be on Governors Island?

A. No Coast Guard league, right.

Q. Did you play on a Coast Guard soccer team?

A. Yes one year.

Q. Do you remember which year that was?

A. I would have to guess it would be '81, '82 year.

Q. Weren't you asked to coach the children's soccer league in part because you participated in the Coast Guard team?

A. No.

Q. Who asked you to participate in the children's soccer league?

A. Juneau Parks and Recs. had contacted me at home and had asked me due to my participation in little league and Juneau parks and Recreation youth basketball.

Q. Was the Coast Guard soccer team that you were on in a league sponsored by Juneau Parks and Recreation?

A. The Coast Guard team I was on?

Q. Were they part of the Juneau Parks and Recs?

A. Yes.

Q. Did you ever ask Petty Officer Grantz or Mr. Johnson to assist you in coaching soccer or bowling?

A. Not assist so much as if I knew that I was going to be working late and Frank was a very good friend of mine and I knew that he was going to be showing up at the game, I would ask him if he would get the kids started so by the time I got there nobody would have had to wait around for me.

Q. You would make these arrangements at work?

A. No it would be either my house or his house.

Q. You would know the previous day when you had to work late?

A. I would always work late. That is how I organized my work, I knew when I had to working on a certain function and servicewides or what ever you have. I organized my work day.

Q. When were you transferred from Alaska to Governors Island New York?

A. 5 June 1984.

Q. Do you know when Mr. Johnson left Juneau, Alaska and where he was assigned?

[104] A. If I remember right, it was June of '83.

Q. Do you remember when Petty Officer Grantz left Juneau, Alaska for his—

A. June of '84 the later part of June of '84. I typed up his orders.

Q. You said that you have been in Alaska for three tours?

A. Three tours.

Q. What is the reputation of the Coast Guard up in Juneau, Alaska?

A. In certain cities we have high—

DC: Your honor, I am going to object to this question as being beyond the scope of direct examination, further the questions have asked and answered by a number of witnesses and it has already been established.

TC: Your honor, I believe the subject matter of the direct testimony is jurisdiction and that is what this series of questions goes to.

MJ: Objection is overruled.

Q. What is the reputation of the Coast Guard up in Juneau, Alaska?

A. In Juneau? I would say we had a very good reputation up there due to our law enforcement and life saving capabilities.

Q. Compared to other communities that you have lived in would you characterize Juneau as particularly close knit because of its physical geographical characteristics?

A. Not necessarily to the geographical location as of the mountain area, I found in the lower 48 you have every thing there to entertain you, you have all these big fairs and big cities, shopping centers. Up in Alaska you don't have so much of that and if you want to have those activities, people have to get together and make a point of entertaining themselves by formulating clubs themselves and outside activities. That is one thing that I liked about Alaska, you went out and made a point of getting involved with each other, with the community.

Q. And since the Coast Guard didn't have that many formal activities for Coast Guard people, it was necessary for the Coast Guard and the civilians to get involved together?

A. If you are saying a lot, like that spaghetti function once a year and some of these other activities once a year, there may have been some but if you are trying to say a lot I would say no.

[105] Q. But if you wanted to become involved in a sport, in

a chess club you would have to go out and form your own team and perhaps even form your own club.

A. Right.

Q. Get civilians and coasties together in order to get number of common—

A. No, I never met a Coast Guard person up there in Alaska that was really that interested in chess. The only reason I played on the Coast Guard basketball team in that first year was because they provided the uniforms and stuff. I was asked by other civilian teams if I would play on their team. I felt, in the first year, some obligation to the Coast Guard. The second year I played, it was due to Frank Grantz.

Q. If an individual in the Coast Guard sexually molested a child, say in a children's league, do you think that would have an impact on the reputation of the Coast Guard in that community?

A. Not necessarily. Alaska is—one thing I like about Alaska is you don't see that type of prejudice or narrow minded view up there in Alaska. If there was one person in the police department who was found guilty, they would not look at the whole police department and say that they were corrupt, like some of the instances here in New York where the police department—some of their members were found using stun guns and many of the comments that I have heard now is that they would think that the majority of the policeman in New York are like that.

Q. So you don't think there would be any impact at all on the Coast Guard's reputation if a member of the Coast Guard was found violating the law in this way?

A. I was—no, they would look at it as a person doing the alleged offense more than so much as an organization. What does the organization have to do with the offense?

Q. If a member of the Coast Guard were involved in sexual molestation of a child dependent of a Coast Guard member, would you expect that that child dependent would be adversely effected psychologically and emotionally?

DC: Objection, Petty Officer Solorio doesn't have any independent knowledge and again it has been testified to by Doctor Caprio and certainly is not within his expertise to testify about the phycological effect.

MJ: Sustained.

Q. If a Coast Guard member was involved in sexual molestation of dependent children of active duty Coast Guard members, would you expect the family to have to undergo counseling as a result of that—

[106] DC: Objection, reasons stated just before the last question.

TC: Your honor, the purpose is not to elicit any expert opinion but merely to establish reasonable expectations of injury in a given situation, who will be injured by a given act.

MJ: Hasn't this been covered?

TC: Not by this witness your honor.

MJ: Sustained.

TC: No further questions.

REDIRECT EXAMINATION

Questions by the defense:

Q. Petty Officer Solorio, after you stopped commuting and car pooling with Mr. Johnson, how did you get to work?

A. By bus.

Q. And the reason you stopped commuting again?

A. There was a number of reasons, because I worked late and couldn't always meet the car pool during that month and a half, two month period.

Q. Which month and a half, two month period?

A. I would say between October and December.

Q. The period that you were car pooling?

A. That I was car pooling of '82. Larry Johnson, I don't know if I should say this—

Q. Just answer the question.

A. I guess I answered it.

Q. Did the fact that Amber Johnson and Jennifer Grantz were daughters of yeoman, did that effect your friendship with the family at all?

A. That they were yeoman? No.

Q. That they were Coast Guard personnel?

A. No.

Q. During 1980 and 1981, which office were you working in in the Seventeenth district?

A. I was working up in (osr).

[107] Q. Did Amber Johnson or Jennifer Grantz ever come to visit you in (osr)?

A. Not that I remember. I don't believe they did.

Q. Would you say that Amber Johnson or Jennifer Grantz visited you frequently at work, or infrequently?

A. They never visited me.

Q. But, you did see them at work?

A. I have seen Jennifer Grantz up there in her father's office a couple of times and Amber Johnson came in for an ID card.

Q. Did you ever invite Amber or Jennifer to come visit you at work?

A. No I did not.

Q. When you asked for the assistance of Larry Johnson or Frank Grantz to assist in soccer, bowling or whatever, did you ask them to assist you because you knew they were in the Coast Guard?

A. No.

Q. Why did you ask them to assist you?

A. They were friends of mine and since they were a part of that association or that outside activity was the sole reason.

DC: No further questions.

RECROSS-EXAMINATION

Questions by the prosecution:

Q. Did Larry Johnson have any particular talent in playing or coaching soccer?

A. No. I asked Frank Grantz though, he was pretty much an athlete.

Q. I thought you said in response to Mr. Hochberg's question that you occasionally asked Larry Johnson and Frank Grantz to assist.

A. Well he included both of them, I don't know why he included both of them, maybe—I remember in the bowling league, Mr. Johnson helped keep score a couple of times for the kids.

TC: No further questions.

MJ: Thank you Petty Officer Solorio you may resume your seat at counsel table.

[The accused returned to his seat.]

Toni Solorio, civilian, was called as a witness for the defense, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Please state your full name, place of residence and your employment.

A. My name is Toni Lee Solorio, I am a house wife presently, we live at 877 apartment 314, Governors Island.

TC: Thank you, your witness.

Questions by the defense:

Q. Mrs. Solorio are you acquainted with YN2 Frank Grantz and his family and CWO Larry Johnson and his family?

A. Yes.

Q. How did you first become acquainted with the Grantz family?

A. I met Kathy, the wife, at work, we were both working at the forest service maybe in '81 and that was through working.

Q. Did your relationship with the Grantz family develop after meeting at work?

A. Later, yes.

Q. How did that develop? What involvements did you have with them that caused the relationship to develop?

A. Our children were in bowling and basketball together and my husband played basketball with Frank and we just became friends.

Q. Did your children ever play at the Grantz's?

A. Yes.

Q. Did Jennifer Grantz ever play at your house?

A. Yes.

Q. Did the fact that Frank Grantz was a member of the United States Coast Guard have any impact in your friendship with the Grantz family at all?

A. No.

Q. Did you socialize with Kathy Grantz at work at all?

A. Yes.

Q. And then after work also?

A. Sometimes, yes.

[109] Q. Did you regularly attend the Saturday morning youth bowling league?

A. Yes.

Q. Did you also see Kathy Grantz at that bowling league?

A. Yes.

Q. How did you come in acquaintance with the Johnson family?

A. They lived next door to us and we really didn't see them very much for the first year or so that we lived there because I was working quite a bit and she stayed home and did day care. We did get to be very close friends later on, about the last couple of years.

Q. What caused you to get very close friends?

A. We had bowling with the children, their kids were involved with bowling like our kids were and other sport activities.

Q. What other sport activities?

A. Soccer and it could have been basketball, I am not sure.

Q. Did you become acquainted or more friendly with Mrs. Johnson as a result that you both ran day care centers together?

A. Yes, very much so. She helped me get stated in my day care.

Q. Were there other families in the neighborhood that you became friendly with?

A. Yes.

Q. Where those be civilian or military?

A. Civilian.

Q. Was the fact that Jo Ann Johnson was married to a active duty Coast Guard member, did that effect your friendship with Jo Ann Johnson at all?

A. No.

Q. Did that effect your family's friendship with the Johnson's at all?

A. No.

TC: Your honor, I'll object to further questioning along this line on the grounds of lack of relevance to the jurisdiction motion. Mrs. Solorio's motivation to friendship is not relevant at all to jurisdiction.

DC: The defense contends on the contrary your honor, that the entire family social off base relationship was the basis of [110] the friendships with the three families and that any relationship they had began off base with off base activities and off base social events and had no connection with the military at all. The connection between the two families developed as a result of the relationship of Mrs. Solorio and Mrs. Johnson and Mrs. Solorio and Mrs. Grantz, Brian and Emanuel Solorio and the Grantz and Johnson children.

MJ: The objection is overruled.

Q. Did you socialize with the Johnson's?

A. Yes.

Q. In what manner did you socialize with the Johnson's?

A. I went to church with them on Sundays sometimes and we participated in the children's activities and also we used to play cards with them in the evenings.

Q. Were any of those church events or card parties or what ever, were they ever Coast Guard sponsored?

A. No.

Q. Did it have any relationship to the Coast Guard what so ever?

A. No.

Q. Did you ever socialize with any other civilian friends?

A. Yes.

Q. Similar manner?

A. Yes.

Q. Did the fact that your husband, YN2 Grantz and CWO Johnson were members of the Coast Guard effect your family's relationships in any way?

A. No.

DC: No further questions.

CROSS-EXAMINATION

Q. Mrs. Solorio you are married to YN1 Richard Solorio, are you not?

A. Yes.

Q. Your testimony dealt with events on direct of events in Juneau while you were up there?

A. Yes.

[111] Q. About how many Coast Guard people lived in your immediate neighborhood?

A. Maybe four or five.

Q. How do you define your immediate neighborhood in terms of blocks?

A. Just how far you can see I guess.

Q. Did you know the Haigh's?

A. Yes.

Q. Did their children play over at your house?

A. Sometimes.

Q. Did your children play over at their house?

A. Yes.

Q. I believe there is another Coast Guard family right behind the Haigh's.

A. I didn't know them.

Q. How many moves have you made with the Coast Guard when your husband got transferred since you have been married?

A. Eleven.

Q. Do you keep in touch with the Coast Guard families that you met at previous duty stations?

A. Sometimes, yes. I also keep in touch with civilians.

Q. For instance, have you keep in touch with the Johnson's since they have been transferred and you have been transferred?

A. Yes.

Q. And the Grantz's?

A. Yes.

Q. Have you ever run into families that you have served with at other duty stations?

A. Yes.

Q. It is a small service and we run into friends in the Coast Guard later on in life.

A. Right.

Q. When your husband coached soccer, what days would that normally be, during the week or on the weekends or both?

A. Mostly weekends.

Q. Did you ever go to those practices or games?

A. Yes.

[112] Q. Did your husband ever bring Jennifer Grantz and Amber Johnson home after those practices?

A. Maybe on occasion, we were friends with them so it is not unlikely.

Q. Amber Johnson lived right next door?

A. Right.

Q. Did Jennifer Grantz or Amber Johnson come over to play at your house frequently?

A. Amber use to come over maybe once a week somewhere around there.

Q. How about Jennifer.

A. Jennifer not as quite as often.

Q. Did these visits encompass most or all of your period of time in Juneau, Alaska?

A. No.

TC: I don't have any further questions.

REDIRECT EXAMINATION

Questions by the defense:

Q. Do you know the Harrara's?

A. Yes.

Q. Are they military or civilian?

A. Civilian.

TC: Your honor, I believe we are going beyond the scope of cross at this point. We seem to be going into matters which are properly brought out in direct examination.

DC: Your honor, the government asked if Mrs. Solorio kept in touch with military members as she has been transferred. The defense intends to offer -

MJ: The objection is overruled.

Q. Are the Harrara's military or civilian?

A. Civilian, they are ex-military people.

Q. And the Stevenson's?

A. They are civilian.

Q. And the Macky's?

A. Civilian.

[113] Q. Do you keep in touch with those people also?

A. Yes.

Q. Whereever you have been transferred?

A. Yes.

Q. Would the relationships with the Johnson's have been just as close if they were civilians?

A. Yes.

DC: No further questions.

TC: No questions your honor.

The witness was duly warned and withdrew from the courtroom.

DC: Your honor, the defense has no further witnesses on the jurisdictional motion.

MJ: Any further from the government?

TC: Nothing further from the government your honor.

MJ: Until nine forty-five the court will be in recess.

The Article 39(a) Session recessed at 0925 hours, 4 June 1985.

The Article 39(a) Session was called to order at 1000 hours, 4 June 1985.

MJ: Please be seated, the Article 39(a) Session will come to order.

TC: Your honor, all parties who were present when the 39(a) Session recessed are again present, no person required to be present is absent. There are no witnesses or members present.

MJ: Before proceeding to argument, I'll state that a matter that I deferred as to Appellate Exhibit IX, the letter from the State of Alaska Department of Law. I will admit for the purpose of consideration on the jurisdictional motion and in doing so recognizing that it contains a good deal of information not particularly relevant to the motion, but accepting it for the position taken by the State of Alaska as stated in the letter.

DC: Your honor, at this point then the defense would offer a Stipulation of Expected Testimony of Louis James Menendez, Esquire, the individual who signed the letter from Alaska which you have just admitted. It states that if the Coast Guard should determine that this court-martial is without jurisdiction to [114] prosecute, Alaska would reconsider its decision not to prosecute. There is no present statute of limitations problem with regard to this case.

MJ: Once again Petty Officer Solorio, do you recall my talking about stipulations and how they work?

WITNESS: Yes your honor.

MJ: Do you understand this stipulation?

WITNESS: Yes your honor.

MJ: And the contents of it?

WITNESS: Yes your honor.

MJ: Do you agree with it?

WITNESS: Yes your honor.

MJ: And you want to enter into it?

WITNESS: Yes your honor.

MJ: The stipulation is accepted and it will be marked as the Appellate Exhibit next in order.

REPORTER: It will be Appellate Exhibit XV.

MJ: Are counsel prepared to argue the motion?

TC: Yes your honor.

MJ: You may proceed.

TC: Your honor, what I propose to do, fairly briefly, is go through some of the assertions made by defense counsel, review a number of the more pertinent cases that are referred to in the government's brief, briefly go through some of the most pertinent findings of fact as they relate to particular *Relford* factors and then some closing remarks. First of all with respect to the defense counsel's brief, one of the cases that is cited there, *United States v. Moore*, dealt with a situation where a serviceman conspired to get death benefits. One of the things mentioned in that case was that the impact on the service had to do with the regulatory program and statutory programs. I mention this in relation to the matters that your honor has been asked to take judicial notice of, the Family Advocacy Program and unrestricted transfer. *Moore* stands for a more concrete example that the impact can be gauged through the framework of a statutory or [115] regulatory policy. Also cited on the first page - second page of the defense counsel's brief, *United States v. Hedlund*, dealt with a case where a Marine who was AWOL was beaten up. There we had a case where the victim was a service person, however, they did not know that the victim was a service person. In contrast in this case the testimony of all the witnesses that the victims were military dependents, persons who accompany military members through out their tours. The vic-

tims were known by the accused to be the dependents of service members. The victims themselves knew that the accused was in the Coast Guard. Defense counsel reviews the *Relford* factors and, of course, in each instance asserts that there is no implication of any *Relford* factor in this case. I believe the testimony and the expected testimony show that there are *Relford* factors involved, there are impacts involved, the only question is are they sufficient? For instance in item 2, "The crime's commission away from base". It is accepted that this crime took place away from base, however, the line between a base and off base is not a bright line which establishes or forecloses military jurisdiction. Many cases represent that point. On page three, *Relford* item six, defense counsel asserts that there is no connection between the defendant military duties and the crime. Here he knew that the victims —

MJ: You say there is not a bright line between away from base and off base, the operative language going back to *O'Callahan* is "at or near". How does that relate here?

TC: Your honor, *O'Callahan* is decreasingly cited, both by our highest military court and by members. They tend to move towards the *Schlesinger* quotation. While acknowledging that *O'Callahan* is good law, they move towards *Relford* which is the balancing approach of all factors and towards *Schlesinger* which makes them very prominently consider the post-offense impacts of a particular crime. In fact I'll point out that *Relford* itself, although it was on base, obviously found it necessary to go through this balancing act because the victims in that case were persons who accompanied military members, the sister of military member and the wife of a military member. The Supreme Court felt it necessary to balance, even in that case even though it was on base, so it is clear that the Supreme Court does not leave the matter with off-base, on-base distinction. The fact that an offense occurs off base immediately creates no military jurisdiction. Indeed, *Relford* would imply that even an offense on base may not have military jurisdiction. I am starting to discuss *Relford* item six which is on page three of the defense brief, "The absence of any connection between the defendant's military duties and crime". First of all, there is the obvious effect on

the other yeoman involved. These are people who Petty Officer Solorio worked with at the district and military relationships have been destroyed or severely compromised by this [116] crime. This is not just a distant effect, it is one that is obvious given the known status of the victim and the known status of the accused and the known status of the victim's parents. In addition, there is an element of, if not flouting of military authority, of a significant effect on military authority for the same reasons. Item eight, "The availability of civilian courts in which the case can be prosecuted". The message from the Seventeenth district indicates that civilian courts are available for these types of crime. The Seventeenth district message does not indicate whether the accused happened to be in that jurisdiction or whether the victims happened to be in the jurisdiction. I believe in one case it indicates that it may have been a dependent who is a victim of a crime, a intra-family crime, and the other case we don't know who the victim is. In this case we know that the defendant and all the victims have been transferred away from the Jurisdiction of Alaska by the Coast Guard for policy reasons independent of the offense. The Coast Guard has removed these people from the jurisdiction of Alaska and has made it more difficult for Alaska to investigate or to prosecute. We have had testimony that Alaska has taken no efforts to interview any of the military members involved or the military dependent victims involved in the charges preferred against Petty Officer Solorio. However, Alaska has reported that they are inquiring about potential civilian victims. Alaska is more interested when there are civilian victims perhaps still living in Alaska then they would be if the victims have departed and are all related to the Coast Guard. There is a threat to a military post, *Relford* item ten, page four of defense counsel's brief. The effects that are felt by the service member father of the dependent victim are a threat to the post itself. These effects are carried around with the military member whether he is on duty or off duty. Indeed, cases that I cite in governments brief indicate that the line between on duty and off duty is very blurred in this day of increased military readiness, the line between peace time and war time can

change at any time. I believe that is *Lockwood*. There is a continuous threat to the military post, both to the affected member and because of our transfer policy in the Coast Guard, the threat to any post the the accused may find himself on. Doctor Caprio testified that the intent, in psychological terms—the love object or the object of affection, is very difficult to change. In the case of pedophilia, we have charged against the defendant acts of child molestation, both in Alaska off-base and in Governors Island on-base. The charges allege a course of conduct which illustrate Doctor Caprio's psychological principle that the intent or the love object, the object of affection, tends to be carried around and creates a threat to the military post.

DC: Your honor, I am going to object to this line of argument since Doctor Caprio stated that there is no way of telling at this point if YN1 Solorio was a pedophile.

[117] MJ: I have heard the evidence, objection overruled.

TC: The other elements, the offenses are traditionally prosecuted in civilian courts, I have already discussed that in relation to Alaska's deferral or waiving of prosecution in favor of Coast Guard prosecution. One of the additional considerations in *Relford* is the commanding officer's responsibility for maintenance of order and discipline. The Seventeenth Coast Guard District is concerned about a perception that military member may not be subject to either civilian or military jurisdiction in these kinds of offenses and that there may be a feeling that these things that go unreported are not criminal. This reflects a perception of the command at the Seventeenth District that offenses by Coast Guard personnel affect the service's reputation and personnel must be reminded that it impacts on good order and discipline within the service itself. I believe you'll find language in that message which leaves that clear intent. Two of the factors that are not very specifically addressed by *Relford* illustrate the principle that the *Relford* are illustrative but they are not all inclusive. The reputation of the service has been emphasized more and more in cases like *Lockwood*. It receives just a passing mention in *Relford* it self. In this area of volunteer service the reputation of the service is extremely important for retention

and for recruitment. Another one that is mentioned is military effectiveness, readiness. It seems to be a very obvious factor but you'll find that *Relford* puts it down in a consideration and it has about a one word mention, "effectiveness". Here we have testimony by the parent-victims, the military member victims, that their military effectiveness has been affected by these crimes. We have psychiatric testimony that those effects are acknowledged and are reasonable psychological impacts on the parent victim. Indeed *United States v. Short* cited by both the defense and the government involves a case where the victim was hospitalized and thus was unable to perform his military duties. That case also emphasized the impact on morale, reputation and integrity of the installation.

In the government's brief I'll emphasize once again that although we do have an off base offenses here, the language in *Lockwood* concerning—making the point that few military enclaves are self-sufficient and usually the service members assigned to a post and their dependents must rely on persons in the surrounding communities for various types of support such as housing, credit, and recreation. It almost seems as if that language is tailored made for offenses occurring in Juneau and the effect on the reputation of the service and the effect of each individual member of that service when the reputation is damaged. In the government brief a good portion of that is given over to the [118] trend of thought that has been evident in drug cases, and in sex offenses, in applying *O'Callaghan* and *Relford*. In these areas of both drug and sex offenses the immediate reaction to *O'Callaghan* was a strict interpretation. Very little balancing. Off base—no jurisdiction, on base—jurisdiction. In most of the cases cited by defense you'll note were decided in 1969 the same year as *O'Callaghan*. In *Trottier* that initial knee-jerk reaction to *O'Callaghan* was finally reversed. The drug cases that have been decided since *Trottier* emphasize the the post offense effects on the reputation and the effectiveness of the service. They seem to see the perpetrator as a lawless individual within the military society who is a threat to the effectiveness. It is not so much the use of drugs as a violation of regulations and law, but they focus on the post-offense effects of that

violation. *Trottier* is an illustration of the used *Schlesinger v. Councilman*, more so than *O'Callaghan*. The government admits that this case may be an unusual case. Here we don't have a victim who is in the service, the victim is one who customarily accompanies a serviceman, a camp follower. *Lockwood*, *Trottier*, and *Relford* illustrate that some of these old concepts need to be reexamined in light of existing experience. Camp followers are now daughters, sisters, wives. *Relford* is an example of that. *Relford* itself acknowledges that the fact that the sister was involved and the wife was involved is important. *United States v. Wierzba*, 11 MJ 742 is one of the primary cases that the government would ask your honor to examine. Even though that is pre-*Lockwood* it uses a *Lockwood* type analysis and found as supporting jurisdiction, violation of personal security of families, disgracing the public image of the Air Force and the military's interest in prosecuting the off-base portion of the charged offenses as exceeding the civilian community's interest in prosecuting just those off-base offenses. *Lockwood* alludes to pendant jurisdiction and *Wierzba* may be a particular application to that type of pendant jurisdiction, which alone, will not support jurisdiction. Because of the military's practice and interest of charging all related offenses in one court-martial, it does create a distinct military interest when there are related or course of conduct charges, charges of all one type, some of which occur on-base and some of which occur off-base. This distinct military interest finds some specifics in the need for military witnesses in both forums; the presence of the accused in both forum. In this case the trauma of child witnesses in two trials rather than one. Pendant jurisdiction receives its final justification in the due process that is accorded to military members in our system of justice. The two unreported cases naming Marine Corps that have been given to both defense counsel and your honor illustrate these points as well. The proposed findings that the government has submitted, in all pertinent factual assertions have been supported by the testimony or the stipulations of expected testimony or the stipulations of fact that are before this court. In particular, the rationale [119] given by states attorney for the

decision not to prosecute illustrates some of the distinct military interests that I have already referred to. The state of Alaska is not interested in the military relationships between the accused and the fathers of the victim. The State of Alaska's interest and ability has been diminished by the Coast Guard's policy to transfer. The Coast Guard interest in seeing that justice is done should be increased by a similar amount. It is the Coast Guard that has diminished Alaska's capability. It is the Coast Guard whose distinct military interest increases by a like amount. I will review the defense proposed findings of fact just to show areas of agreement your honor. The government does not disagree that Petty Officer Solorio was and is now a member of the United States Coast Guard, Amber Johnson is a civilian dependent, Jennifer Grantz is a civilian dependent. Where the government does disagree most strongly is the assertion that the integrity and security of any military base has never been violated at any time. The government disagrees very strongly that there was no connection between the accused's military duties and the alleged offenses. The government disagrees that the relationship between the accused and the alleged victims developed as a result of off base civilian activities. Because of the character of the community of Juneau and the Coast Guard's reputation in Juneau, the relationship between the accused and the alleged victims—for the purpose of this argument I am going to include the parent victims and the parent victims in the term victim. The relationships are mixed. Part of them result as a result of a military association and military working relationship and part of it results from off base "civilian activities". A friendship, like society, is a seamless web, it is difficult to separate those strands, but it is clear that an element of the friendship and the access to the dependent victims was the accused's military relationship. The government is not emphasizing the pre-offense context, contact between the accused and the victims. There are some, Jennifer Grantz met the accused at his duty station many times before the offense. Amber Johnson met him when she went for ID cards, perhaps for other reasons. She knew he was in the military. The primary basis for jurisdiction in this case are the post-

offense effects on the service and on the military member and on the victim. In summary, it is clear from the testimony that this course of conduct that includes both off-base offenses and on-base offenses is, in a sense, all arising out of the same criminal "design", that design being the object of affection that Doctor Caprio testified to and they create a threat to this post as well as the base, in the Seventeenth District. The impact on the military members morale and effectiveness is substantial and indeed it would be the same impact whether on-base or off-base. The impact on the Coast Guard's reputation of an offense such as this would be the same on-base or off-base. Much has been made of questions by the defense that if the perpetrator were a civilian, that the same [120] impacts would be felt by Amber Johnson, Jennifer Grantz and their parents. That is true and that were the case we wouldn't be here in a military court because we would not have personal jurisdiction. The point is that these impacts have been caused by a military member. So all of those questions about impacts being the same personally on these victims if the perpetrator had been civilian are just meaningless. The point is that these impacts were caused by a military member on military interests and persons associated with the military. All of these factors lead to a conclusion that the Coast Guard has a distinctly greater interest than the civilian courts in prosecuting all of these alleged offenses. The key is in *Schlesinger v. Counselman*. The issue turns in major part on gauging the impact of an offense on military discipline and effectiveness on determining whether military interest in deterring the offense is distinct from and greater than, and here we have both a distinction and a greater interest than that of civilian society and whether the distinct military interest can be vindicated adequately in civilian courts. State of Alaska has admitted that they would not consider many of these distinct military interest in a case such as this. These distinct military interest create court-martial jurisdiction. There is subject matter jurisdiction over the Alaskan offenses. That is all the government has your honor.

MJ: Thank you.

DC: Your honor, the government has alleged a series of crimes against two military dependents, civilian military de-

pendents. The allegations include crimes that grew out of a relationship, a relationship with two families and the basis for that relationship, as testified to by all the witness here concerned, was civilian non-Coast Guard related functions. Civilian outside activities. Geographical relationships. Those relationships between the families would never have developed notwithstanding the fact that Petty Officer Solorio, CWO Johnson, YN2 Grantz were members of the same organization, worked in the same place. Those relationships would not have developed in the manner they developed, if at all, outside the fact that all the families had children of similar ages and those children were playmates. I note that in the stipulation of expected testimony of Amber Johnson and Jennifer Grantz the relationship flourished because the children played together and without the children playing together the relationship would have been much different. The government has claimed that there has been a dramatic impact in the effectiveness of the military parent of the victims. The government has alleged that the military parent is also a victim. In my questioning of Doctor Caprio I focused some what on similar effects of a car accident. Now in civil tort law it is accepted that if a parent, in many states, witnesses a car accident that parent has received an injury. But if the parent is removed from [121] the car accident and just learns of it at a later point, and that later point need not be too remote, the parent no longer has a cause of action. The situation is analagous here, the parent is a victim because of his or her own subject feelings or concerns. But being a victim is not being a direct victim. The impact upon the parent is not clear and measurable and it is certainly not direct and substantiated, excuse me not direct, it may be substantiated. Just like in civil tort law that parent can no longer be considered a victim. As I noted in my brief in *Lockwood* forged the name of another service member and the forgery could cause that service member direct and substantial harm, because that service member could be called into court and forced to defend himself. It is not the case in the case before us. There has been much testimony about the reputation of the service. Yes the Coast Guard does have a good reputation, hopefully it

has a good reputation where ever it goes. In Juneau it has a very good reputation, it is a small community, 20,000 individuals live and work there. But there hasn't been a bit of testimony about the effect on the reputation. It might be damaged if the crime became known at the time of the commission while in Juneau, but there has been no effect on Juneau. There has been no effect on Governors Island as testified to by CWO2 DeMarchi who lives on Governors Island and Chief Truby who lives on Governors Island was not even aware of any effect on the reputation. The individuals who testified about reputation diminishing respect to the uniform all testified that they loved their uniform, that they loved the Coast Guard, they are proud to wear that uniform and the fact that these crimes may have occurred has not and did not diminish their respect and love for the Coast Guard. Military relationships have been alleged to have been damaged. Mr. Johnson and Petty Officer Grantz both testified that those military relationships would be damaged in the same way if there was a murderer of a rapist or a robber that they had to work with. Military relationships are damaged by criminals, but that in itself is not sufficient to confer a court-martial to hear and try a case. There is an interest in trying all cases in the same form and this is very true. But, from Special Agent Smith's own testimony it seems fairly obvious that all the cases will not be tried in the form and can not be tried in the same forum because Alaska is investigating further alleged violations or alleged offenses allegedly committed by Petty Officer Solorio. In that case Petty Officer Solorio would still be forced, if there was subject matter jurisdiction of these offenses, to defend himself in this court and defend himself in Alaska. The interest of judicial economy will not be served in either case. It is either a question of cases here and cases there, possibly four here and two there or two here and four there. The interest of judicial economy cannot be served by conferring upon this court subject matter jurisdiction. There has been a continuing evolution of the concept of subject matter jurisdiction and the concept of service connection. *United [122] States v. Trottier* and *Murry v. Haldeman* recognized that evolution. It also recog-

nized the impacts. *Trottier* and *Murry v. Haldeman* both recognized that if an individual is accused and found guilty of—accused of using drugs it may be tried in a court-martial even though those drug offenses occurred off base, except in a case where the member has been on extended leave away from a military installation. *Trottier* said extended leave might be 30 days and that is where it becomes remote. In this case we are talking about one to four years and it is not clear when these offenses occurred. In a period of one to four years prior to this time that these offenses have occurred. The impact is to remote. The impact upon the service members, their feelings, is indirect. It is insufficient to confer upon this court subject matter jurisdiction. *United States v. Lockwood* and the other cases cited in the defense brief look at a variety of factors, but the variety of factors they look at are separate factors. *Lockwood* did not say—did not focus upon the effect, reputation, morale, integrity and discipline, it said that it can not be ignored. It is one factor. In this case we have that one factor but it indirectly effects reputation, morale, discipline, etc. *Lockwood* involved the larceny. In *Lockwood* credit was a concern because a service member abused that position of trust that all individuals hold, all respected individuals, directly related to the credit issue. It is not the case here. What we have here is allegations of crimes committed by civilians off base and were not discovered or reported until long after the offenses took place. The effect is not direct. In *Lockwood* the effect was direct, it was immediate. *Trottier* also focused on the expertise of military courts with regard to drug offenses. It also focused on the fact that civilian courts are not as concerned about drug offenses, minor drug offenses—use of drugs as compared to distribution, as the military. The military has a very special interest in drug offenses. Alaska on the other hand in all civil jurisdictions have a very real interest in prosecuting sex offenses, sex offenses committed upon residence in their community or state. The government has made a point of arguing the course of conduct. The defense contends that the government is wrong as far as course of conduct. First of all, this isn't the type of course of conduct that would satisfy the multiplicity

requirement. This isn't a course of conduct with regard to each offense. These are separate offenses, all separately alleged, all separately charged, all occurring in different ways, no showing of a course of conduct and it is not a course of conduct that began on base and continued off base, it is a course of conduct that is alleged to have occurred off base first and at a later date there are crimes alleged to have been committed on base. *United States v. Shockley* looked at this issue very closely and said the off base offenses were not service connected, but the on base offenses were. The defense contends that if the on base offenses occurred first and then the off base offenses occurred, that would have been the course of conduct [123] that began on base and continued and would confer on a court subject matter jurisdiction. This case is clearly on point with *Shockley*. In *Shockley*, *McGonigal*, and *Henderson*, those three cases dealt with – were directly on to this case and stated clearly that when you have an offense committed off base, even against military dependents, that offense is not service connected without more, without a showing of more. That is where *Wierzba* is very clear. In *Wierzba* there were six factors that the court looked at. The accused used his status as a military member. He went to Civil Air Patrol meetings in his uniform. He was allowed to participate in Civil Air Patrol meetings primarily because he was a member of the Air Force. Petty Officer Solorio did not participate in soccer and bowling and the other civilian activities that he participated in because he was a Coast Guard member. He participated because he was a parent. In *Wierzba* the accused his on base housing and erotic materials in that on base housing as part and parcel to the scheme, and that is very important. Pendent jurisdiction does not apply here. An essential element to pendent jurisdiction is the common nucleus of operative fact. There is no common nucleus of operative fact with regard to the cases in Alaska and the cases on Governors Island. *Wierzba* victimized Air Force military dependents. Where did those dependents live? They lived on base –

MJ: Let me back you up to your pendent jurisdiction comment. I hear what you are saying as far as no common nucleus of operative fact but should the concept apply?

DC: In this case or in the military in general?

MJ: Is it a consideration?

DC: The defense contends that it may be a consideration. It may be a consideration if there is that common link. for instance, two alleged victims on Governors Island, Jennifer Scott and Malissa Carney, that arises from the common nucleus of operative fact. The offenses were alleged to have been committed at a party on January 4th and January 5th. That is the common nucleus of operative fact. Pendent jurisdiction, sure, is a consideration. Judicial economy is a consideration but, it is not an over-riding consideration. The over-riding consideration is the accused's right to trial by jury, to Grand Jury indictment and also to a unanimous verdict. Although the military has progressed from the time of *O'Callaghan* to where there are more procedural protections for an accused, there are still some essential Constitutional rights that are not provided and should not be provided to military accused who appear in court-martial who properly appear before military court-martial. As far as pendant jurisdiction, yes it is a consideration if the concept applies, but in this case the concept does not apply as was stated in *Brannon* the phrase was just a collection of disparate [124] acts solely linked by the general nature of the allegations. In *Wierzba* since the course of conduct began on base by picking up dependents from their on base housing, *Wierzba* did violate the personal security of Air Force families. That was a direct clear measurable impact, clear and measurable violation of a military base. A commanding officer does have the responsibility as clearly shown by CO of Support Center, he is the mayor of Governors Island. He has responsibility for all the families, military and civilian dependents, that live on his base. When military members live on the economy off a military base, a commander's interest is greatly if not completely diminished. Finally in *Wierzba*, *Wierzba* disgraced the public image of both United States Air Force and Civil Air Patrol. He did this by wearing his uniform and committing crimes while he was in uniform. *Wierzba* did not just look at the military dependent status of the victims and say okay we have service connection, it looked at other significant factors. In

every case that has conferred subject matter jurisdiction on the basis of service connection on court-martials there have been other significant direct impacts, direct concerns that apply. Not the case here. It was not the sole factor, the disgracing of the public image in *Wierzba*, it was one of many considerations. In this case we had the dependent status of the victim and from that the other considerations that the government sets forth are boot strapped from that dependency status. The effect on morale, boot strapped from the dependency status. The fact that Jennifer Grantz and Amber Johnson visited the accused on rare occasions, once in a while, while at work, incidental to the reason they were there, to visit their father or to have an ID card picture taken. When no offenses occurred on base at that time and that meeting was not part and partial of any of the offenses charged cannot be used as a basis to establish service connection. Going back to *Lockwood*, *Lockwood* initiated a crime on base. There were direct service member victims, an individual had his wallet stolen. The course of conduct continued. Pendent jurisdiction may have applied there, it was considered there because that was all arising out of a common nucleus. The offenses in Alaska and the offenses in New York are wholly separate so pendent jurisdiction does not apply. The Seventeenth district message makes it clear that Alaskan courts are ready and available to prosecute cases like this. Again Special Agent Smith's testimony that they are actively pursuing other allegations, other potential victims, indicates that they are available and that Petty Officer Solorio may be forced to have his cases heard in two forums. Judicial economy won't be served. The commanding officer recognized what the responsibility was, what the responsibility of military members are, but it is a responsibility of all citizens. It is their responsibility not commit crimes. In *Shockley*, *McGonigal*, *Henderson* and also in *Rappaport*, cases clearly establishing that there was no service connection to try those offenses, there were even more factors than are present here that might have [125] tended to indicate service connection. Offenses were committed in the other service member's home, not the accused, but the other service member's. In

Rappaport the victim was at the time an Air Force officer. Undoubtedly their meeting occurred on base, but the court made clear in analyzing the *O'Callaghan* and the *Relford* factors, not withstanding government's contention, that *O'Callaghan* and *Relford* have not been previously cited. *Rappaport* relied solely on *O'Callaghan* and *Relford* and found no service connection. The government contends that the effect on the dependents' fathers is a threat to military post. It is not a threat to a military post, it is an effect on a military member. The defense concedes that it is an effect on a military member but the military member is not the victim. A remote victim maybe, but the victims. That effect would have been the same had it been a civilian perpetrator. The importance of that is that these offenses are not clearly those having military significance. The effects would have been the same on the parents. The time away from their desk, their concern for their daughters would have been the same and those parents right and interest can be adequately vindicated in any form. The military forum is not necessary to vindicate the military interest. *Scheslinger v. Councilman* makes it clear that direct and substantial impact on the military, significant impacts within the enclave. There are no significant impacts within the enclave. The government did provide the court and myself with copies of *Mattao* and *Heuit*, two Navy-Marine Corps CMR cases. In *Mattao* the court based its decision on deferring jurisdiction over the off base sex offense on two significant facts; 1) That the pendent jurisdiction issue applied, it was a common nucleus of operative fact and not only that, the drug offense were inrestrictably linked with the sex offenses. Since the drug offenses were clearly within subject matter jurisdiction of the court-martial, the sex offenses could also be tried. In *Heuit* the court found, and the findings in the government brief indicate this although the discussion does not clearly indicate it, that there was a sufficient on base connection. The initial contact, not an incidental contact, but the initial contact between the accused and the alleged victim occurred on base. There was continued contact on base between the accused and the alleged victims and the families. That is not the case in the case before us. There is no indica-

tion from the testimony we have heard in this 39(a) Session that any of the offenses occurred based on the trust placed in Petty Officer Solorio because he was a service man. What ever trust there was was based on off-base civilian-generated friendship relationships. The military status of the accused is just not involved. Once there was the initial contacts on base, the continued meeting on base, the course of conduct continued off base. Again pendent jurisdiction may apply or that concept may apply because of that continuing course of conduct as status previously. What ever course of conduct there was is a reverse course of conduct. The [126] defense would agree in *Shockley* if the on base offenses occurred first, the off base offenses very well, since it was the same victim, continuing course of conduct, may very well have been service connected and within court-martial jurisdiction. Since the initial contacts knew what occurred on base, the integrity of the military instillation was threatened. But that is direct, not as the government would argue, that it affects the parents so there is that threat. It was a direct effect, a direct threat to the military instillation. You would also have found that the interest of the military is distinct from and greater than the interest of the state. In this case the interests of the military is not distinct from the the state's, the interest are identical. The difference is, the state clearly had jurisdiction to try the offenses. The state clearly has jurisdiction to try the other alleged offense in which they are investigating, but this court-martial does not have subject matter jurisdiction over offenses allegedly committed against civilian dependents off base with no other military connection. The government sought to make the point of the fact that the Juneau area is inhabited by many Coast Guard residents. There is also testimony that there is no way in and no way out of Juneau except by air or by boat. Obviously any military member who lives or works in the Seventeenth district has to live in the Juneau area. There are 200 or 250 military members on base in the Seventeenth District. That is a ratio of one to 1,000 military to civilian. Again, in, I believe it was *Henderson*, the crimes were committed in Colorado Springs, that is clearly a military community. More so probably than Juneau is. Again, *Hender-*

son was not service connected because there was insufficient contact with a military base. Insufficient impact, in this case crimes being reported long after they occurred, that impact has to be remote. The testimony of Mr. Johnson and YN2 Grantz was that they no longer trust males with their daughters. The testimony of Chief Truby, he is more cautious of his daughter now not just because of what he has heard about this case, but the fact that child sex abuse cases are becoming more and more reported. They are making the news. The fact that the perpetrator is a male is a cause for concern of all citizens, not just military members, but of all citizens. The government also made a point of posing the fact that military personnel have been involved in the investigation of the case and to a small extent the counseling of the individuals. If dedication of military personnel to a case was sufficient to establish service connection, the military could establish connection over every offense committed by a service member simply by dedicating personnel to that case. That would be a threat to discipline in the government's view because it takes time away from those individual's other duties and responsibilities. The government, if that was the case, could generate service connection in each case and make the service connection requirement a nullity. Mere incantation of the words course of conduct, morale, discipline, greater military [127] interest is simply an assertion without substance. In this case the offense allegedly committed by YN1 Solorio off base fall clearly within the historic principle as set forth in *Winthrop* and as cited in my brief that crime committed upon or against civilians not at or near a military camp not in violation of any military duty are in general not to be regarded as in the description of the UCMJ, it is a general article but there is no differentiation between Article 134 and other articles of the UCMJ, and are to be treated as civil rather than military offenses. In this case the Alaskan offenses are clearly civil and outside court-martial jurisdiction. Thank you your honor.

TC: Response to just a few points your honor.

MJ: Briefly.

TC: With respect to the assertion that the parents are indirect victims, to cite just an example *United States v. Ross* cited in both government and defense counsel briefs was a simple destruction of a civilian owned pay telephone. The offense affected the morale and well being of fellow servicemen for whose benefit the telephone had been installed. Simple case and indirect victims, but that is where the service connection was, the indirect victims. Many of the drug cases in that there is an effect on morale and reputation of the service. Certainly the effect on the individual serviceman's morale and their own effectiveness is far more directly effected in this case than in any of the drug cases. I said the government relies primarily on the post-offense effects of this particular offense and primarily on the effect on the parents and the camp followers, the children or dependents. In addition we rely on the distinct military interest because of the fact that all of the persons involved in these charges are related to the military, whereas whatever interest Alaska might have they involve children victims still in Alaska. As defense counsel pointed out there are so few contacts that initiated these friendships that are directly related to the service. But Petty Officer Solorio said he did not know Frank Grantz until he played on the Coast Guard sponsored league and after that he met Jennifer. I don't want to be into an absurd argument, but for the fact that both the Johnson's and the Solorio's were put in the same locale by the Coast Guard, they would not have been neighbors. We can keep going back and back and back but that just illustrates my point that the origins of the relationship between Petty Officer Solorio and Amber Johnson in this example is a seamless web. You can't get to the beginning of it and you can't get to the end of it. The point is there are military relationships involved and there are military effects involved. The government concedes it is not the sole involvement, it is not the sole factor. All you need is one *Relford* or similar factor to find jurisdiction if that factor is significant enough and creates a distinct military interest. In this case there are many of those factors involved. [128] MJ: During your argument, not because it was related thereto but because I was shuffling papers, it occurred to me

that the government letter initiating the or inquiring and resulting in the response which I've now admitted which was provided to me for *in camera* examination should be sealed in an envelope and the envelope marked as an Appellate Exhibit and attached to the record. I will accept this copy for that purpose.

TC: Your honor, obviously the original is with the State of Alaska.

MJ: The rules particularly allow a copy in that regard. Let's take a short recess following which I will be prepared to rule on the motion.

The Article 39(a) Session recessed at 1110 hours, 4 June 1985.

[129] The 39(a) Session was called to order at 1120 hours, 4 June 1985.

MJ: This Article 39(a) Session will come to order, please be seated.

TC: Your honor, all parties who were present when the Article 39(a) Session last recessed are again present, no party required to be present is absent, there are no witnesses or members present.

MJ: I am going to grant the defense motion to dismiss the Alaska offenses. I'll make certain comments in support of that ruling. First I will compliment counsel for their excellent briefs and arguments in laying out the issues on that matter.

I. The considerations; Constitutional; Supreme Court decisions in *O'Callaghan*, *Relford*, *Sehlesinger*, the provisions Rule for Court Martial 203 and its discussion and its analysis; The Court of Military Appeals decisions were all cited. Certainly the earlier cases, very closely on point, as Government pointed out many of them dated 1969 and presumably backlogged on the docket at the time of the *O'Callaghan* decision, up to and through *Lockwood* and even more recently *Johnson* and other cases and numerous Court of Military Review cases that were cited and argued. Pendant jurisdiction was found to be not applicable to establish jurisdiction in this case though I have considered it, especially in light of *Lockwood*. I have applied a preponderance of the evidence standard with the Government having the burden of persuasion.

II. In simple terms my finding is that the Government hasn't met its burden. I certainly recognize a continuing evolution of the concept of subject matter jurisdiction in military jurisprudence. Nevertheless, I recognize what the law is and am not necessarily applying where it may be going.

III. I adopt as essential findings of fact the stipulation of fact for the jurisdictional motion which has been entered into by the parties in this case.

With respect to the *Relford* factors:

– I find that the accused was properly absent from his unit at the time of each of the alleged offenses.

[130] – Each offense was alleged to have occurred away from any military base at the accused's residence in the civilian community.

– Each offense was alleged to have occurred in a place not under military control.

– Each offense was alleged to have occurred within the territorial limits of the United States,

– None of the offenses was alleged to have been committed during time of war and all offenses were unrelated to authority stemming from the war power.

– The accused did not use his military position to commit any of the alleged offenses, nor did he commit any of the alleged offenses while performing his military duties. In short, there was no connection between the accused's military duties and the alleged offenses.

– The victims were not service members and were not involved in military duties or military supported or sponsored activities at the time of any of the alleged offenses.

– Civilian courts are present and available to adjudicate the offenses. While the State of Alaska has presently deferred prosecution in light of this proceeding, the State has not waived prosecution, not declined to prosecute.

– Accused was not in uniform and in no way flouted military authority at the time of the alleged offenses.

– None of the alleged offenses posed a threat to any military installation. None of the alleged offenses resulted in any violation of military property.

– All of the alleged offenses are of the type traditionally prosecuted by civilian courts and are specifically of the type the Coast Guard has recently consented to have civilian courts prosecute Coast Guard members for in Alaska.

With respect to those so-called "additional *Relford* factors":

– There is no essential interest of the military in the security of person or property on post in this case.

– No issue challenge the Commander's responsibility and authority to maintain order.

– There has been no demonstrated impact of the offenses on morale, discipline, the reputation or the integrity of the Coast Guard in Juneau, the personnel assigned there, nor on military operations or missions. The impact apparent in this case, that is, on the parents and the victims themselves is no different than that which would be produced by civilian perpetrator.

[131] – There has been no evidence suggesting a potential lessened interest, concern or capacity of civil courts to vindicate the military's disciplinary interest in prosecuting these offenses. To the contrary, Appellate Exhibit X suggests that civil courts in Alaska have recently produced results highly satisfactory to the military in similar cases.

– The Constitutional authority of Congress to authorize Court-Martial trials for other than purely military offenses is recognized and respected, as are the precedents of higher level courts.

– The particular geographic situation in Juneau with access restricted to sea and air is not unlike that of Hawaii at the time of the offense in *O'Callaghan*, and the population of the Coast Guard in Juneau in relation to the population at large did not create a relationship of a pseudo-military camp or installation. The fortuitous selection of Coast Guard member's housing in relative proximity to one another in the Mendenall Valley likewise did not create any relationship between civilians and the military, calling for the exercise of military jurisdiction for the offenses allegedly committed there. Here we do not have a case of inability to distinguish the military from the non-military area of a post or between the accused's on duty versus off-duty time while on post. These alleged offenses are off duty and off post.

-The historical fact that Court-Martial jurisdiction has been exercised over offenses which victimized the persons of someone associated with the military is recognized, as is the fact that *O'Callaghan* and other precedents did not intend to limit Courts-Martial to purely military offenses.

The offenses charged are not purely military offenses. There are a *de minimum* military relationship between the accused and the military fathers of the victims. Those relationships were founded primarily upon the ages and activities of the children and additionally upon common sporting interests, common spousal interest and employment and neighborly relationships. There has been no showing of diminished morale, discipline, or effectiveness within the military community in Juneau, Alaska. As to the effect of the alleged incidents toward the Coast Guard within the civilian community, there has been speculation by military personnel, but little more. No unfavorable publicity in the Juneau Empire or otherwise has been introduced into evidence. There is no evidence that these alleged offenses were known by anyone in the community to have taken place, outside of law enforcement circles. I find no adverse impact on the reputation of the Coast Guard in Juneau has resulted from these incidents. The on-base association between the accused and the alleged [132] victims was minimal and did not provide the accused with the opportunity to commit the acts giving rise to the charged misconduct. The occupancy by military personnel and their families of homes in the Mendenhall Valley area of the City of Juneau, Alaska, including several military families living within close proximity to each other, did not convert that area into a military base or property otherwise under military control. the fact that several military members purchased homes in proximity to one another did not bring these offenses within the "at or near" meaning of a military base or otherwise make them on base. I acknowledge a certain amount of logic in the judicial economy argument put forth by the Government and that political or economic considerations may support exercise by this court of jurisdiction. However, those factors along with all others have not demonstrated a superior military interest in handling these

offenses. The allowances paid by the military and authorized by Congress for military personnel in Juneau, Alaska to live off base do not support the exercises of Court-Martial jurisdiction for offenses allegedly committed in the residential area of the civilian community by military members, but tend to support a conscious choice not to create military enclaves with a recognition of the authority of civil authorities to exercise jurisdiction in those areas. Again Appellate Exhibit X provides support in this regard. The impact of the alleged offenses, primarily reflected in the testimony of the service member parents of the victims, is that which might be expected of the victim of any crime of a similar nature, and while that impact may manifest itself in the work situation of those members, it does not rise to the level to compel the exercise of Court-Martial jurisdiction in these circumstances. In this regard, I note the increased caution of the parents victims may not exercise over their children, the requirements for counseling, anxiety, and time away from work for legal proceedings. These concerns would be the same whether the status of the offender were military or civilian. There has been no impact on transfer of military personnel within the meaning of the Personnel Manual provisions which have been taken judicial notice of. There have been transfers of all involved parties without restrictions.

With respect to the Coast Guard Advocacy Program, I find that Commandant Instruction 1750.3 as supported by the testimony of Captain Caprio, who was a participant in the founding of that policy specifically excludes the situation at present from its definition of child abuse. As defined in that instruction child abuse relates solely to intra-family type relationships and family there is defined not to include its broader definition of the Coast Guard family. The instruction species and in enclosure three that local laws shall govern and adopts the requirements to report in accordance with local laws and mentions that local jurisdiction shall control. Paragraph 4f states a policy to relinquish federal jurisdiction and specifies in [133] paragraph 4d that the court action of local authority shall be considered separate and distinct. Those same considerations that I have focused on from the

Family Advocacy Program instruction are reflected in the other document taken Judicial Notice of the pamphlet Charting Your Life in the Coast Guard primarily those on page 113 and thereabouts were many of the provisions of the instruction are just repeated. In light of the facts as found and in particular the reach of the Coast Guard Family Advocacy Program, I find that the Coast Guard interest in deterring these offenses is not distinct from that of civilian society and is less than that of civilian society, and what little if any distinct military interest there may be, can be adequately vindicated in civilian courts.

MJ: Subject to amendment and correction at the time of authentication those should constitute the essential findings of fact on that motion. Is the defense ready to proceed with other motions?

BEFORE A GENERAL COURT-MARTIAL CONVENED
BY THE COMMANDER, THIRD COAST GUARD
DISTRICT, GOVERNORS ISLAND, NEW YORK

(Title omitted in printing)

Notice of Appeal by the United States

Pursuant to the provisions of Article 62, UCMJ, RCM 908 and Part 510 of the Coast Guard Military Justice Manual (MJM) (COMDTINST M5810.1 eff. date 1 April 1985), the United States, through the detailed trial counsel in the above captioned case, makes the following notifications and certifications to the Military Judge in the above-captioned case, CDR Paul M. Blayney, USCG:

Having notified the Military Judge in Article 39a session of the government's intent to seek permission to file a notice of appeal under RCM 908(b)(1);

Having received authority to file a notice of appeal from a person designated by the Secretary concerned under RCM 908(b)(2);

THEREFORE, Under the provisions of Article 62, UCMJ and RCM 908(b)(3), the United States elects to appeal a ruling of the Military Judge, CDR Paul M. Blayney, USCG. The United States will appeal the ruling of the Military Judge granting the defendant's motion to dismiss Charge I, Specifications 11-15, Charge II, Additional Charge I, Additional Charge II, Specifications 1-2 and Additional Charge III. The Military Judge ruled that the listed charges and specifications, which include off base incidents of child molestation of Coast Guard dependents in Juneau, Alaska, by YN1 Richard Solorio USCG, did not have sufficient service connection to establish Court-Martial jurisdiction over the off-base Alaskan offenses. The United States also will appeal the Military Judge's findings of essential facts in support of his ruling. Military jurisdiction over the offenses that are alleged on Governors Island, NY was not contested by the defense.

I certify that this appeal is not taken for the purposes of delay. Indeed, expedited review of the Military Judge's ruling is requested due to the adverse effects that delay has on the memories and counseling of child witnesses involved in this

case. Two of the child witnesses are undergoing intensive family counseling and their parents and counselors have represented to trial counsel that progress in therapy is difficult when "trial trauma" is ever present in the childrens' minds. I also certify that the listed charges concerning off base offenses of child molestation in Juneau, Alaska, and the evidence available to prove those offenses, are a substantial part of the government's case against the accused.

I certify that this notice of appeal was orally communicated to the Military Judge at 1500, 4 June 1985, and that this written notice has been issued and mailed to the Military Judge within the 72 hour period established by RCM 908 and the Military Judge. An uncertified copy of the Military Judge's ruling and essential findings of fact is appended to this notice.

/s/ FRANK E. COUPER

Frank E. Couper
LCDR, USCG
Trial Counsel

(Certificate of Service omitted in printing).